

**00170.32 Protection of Navigable Waters** - The Contractor shall comply with all applicable Laws, including without limitation the Federal River and Harbor Act of March 3, 1899 and its amendments.

The Contractor shall not interfere with waterway navigation or impair navigable depths or clearances, except as U.S. Coast Guard or Corps of Engineer permits allow.

**00170.60 Safety, Health, and Sanitation Provisions** - The Contractor shall comply with all Laws concerning safety, health, and sanitation standards. The Contractor shall not require workers to perform Work under conditions that are hazardous, dangerous, or unsanitary.

Workers exposed to traffic shall wear upper body garments or safety vests that are highly visible and meet the requirements of 00225.25.

Workers exposed to falling or flying objects or electrical shock shall wear hard hats.

Upon their presentation of proper credentials, the Contractor shall allow inspectors of the U.S. Occupational Safety and Health Administration (OSHA) and the Oregon Occupational Safety and Health Division (OR-OSHA) to inspect the Work and Project Site without delay and without an inspection warrant.

According to ORS 468A.715 and ORS 468A.720, the Contractor or a Subcontractor who performs Project Work involving asbestos abatement shall possess a valid DEQ asbestos abatement license.

**00170.61 Industrial Accident Protection:**

(a) **Workers' Compensation** - The Contractor shall provide workers' compensation coverage for on-the-job injuries as required by 00170.70(d).

(b) **Longshoremen's and Harbor Workers' Compensation** - If Work to be performed is over or adjacent to navigable waters, the Longshoremen's and Harbor Workers' Compensation Act, (Chapter 18, Title 33 of the USC) may apply, and the Contractor shall be responsible for complying with its provisions (which may include the provision of additional workers' compensation benefits to employees).

**00170.62 Labor Nondiscrimination** - The Contractor shall comply with all Laws concerning equal employment opportunity, including without limitation those prohibiting discrimination because of race, religion, color, sex, disability, or national origin.

**00170.63 Payment for Medical Care** - According to ORS 279C.530, the Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

**00170.65 Minimum Wage and Overtime Rates for Public Works Projects:**

(a) **General** - The Contractor is responsible for investigating local labor conditions. The Agency does not imply that labor can be obtained at the minimum hourly wage rates specified in State or federal wage rate publications, and no increase in the Contract Amount will be made if wage rates paid are more than those listed.

(b) **State Prevailing Wage Requirements** - The Contractor shall comply with the prevailing wage provisions of ORS 279C.800 through ORS 279C.870.

(1) **Minimum Wage Rates** - The Bureau of Labor and Industries (BOLI) determines and publishes the existing State prevailing wage rates in the publication "Prevailing Wage Rates for Public Works Contracts in Oregon". The Contractor shall pay workers not less than the specified minimum hourly wage rate according to ORS 279C.838 and ORS 279C.840 and shall include this requirement in all subcontracts.

See the Project Wage Rates page included with the Special Provisions for additional information about which wage rates apply to the project and how to access the applicable wage rates.

**(2) Payroll and Certified Statements** - As required in ORS 279C.845, the Contractor and every subcontractor shall submit written certified statements to the Engineer on the form prescribed by the Commissioner of BOLI in OAR 839-025-0010 certifying compliance with wage payment requirements and accurately setting out the Contractor's or subcontractor's weekly payroll records for each worker employed upon the project.

The Contractor and subcontractors shall preserve the certified statements for a period of 6 years from the date of completion of the Contract.

**(3) Additional Retainage:**

**a. Agency** - As required in ORS 279C.845(7) the Agency will retain 25% of any amount earned by the Contractor on the project until the Contractor has filed the certified statements required in ORS 279C.845 and in FHWA Form 1273, if applicable. The Agency will pay to the Contractor the amount retained within 14 Days after the Contractor files the required certified statements, regardless of whether a subcontractor has failed to file certified statements.

**b. Contractor** - As required in ORS 279C.845(8) the Contractor shall retain 25% of any amount earned by a First-Tier subcontractor on the project until the First-Tier subcontractor has filed with the Agency the certified statements required in ORS 279C.845 and in FHWA Form 1273, if applicable. Before paying any amount retained, the Contractor shall verify that the First-Tier subcontractor has filed the certified statement. Within 14 Days after the First-Tier subcontractor files the required certified statement the Contractor shall pay the First-Tier subcontractor any amount retained.

**(4) Owner/Operator Data** - For a project funded by the FHWA, the Contractor shall furnish data to the Engineer for each owner/operator providing trucking services. Furnish the data before the time the services are performed and include without limitation for each owner/operator:

- Drivers name;
- Copy of driver's license;
- Vehicle identification number;
- Copy of vehicle registration;
- Motor vehicle license plate number;
- Motor Carrier Plate Number;
- Copy of ODOT Motor Carrier 1A Permit; and Name of owner/operator from the side of the truck.

**(c) State Overtime Requirements** - As a condition of the Contract, the Contractor shall comply with the pertinent provisions of ORS 279C.520 and 279C.540.

**(1) Maximum Hours of Labor and Overtime Pay** - According to ORS 279C.540, no person shall be employed to perform Work under this Contract for more than 10 hours in any 1 Day, or 40 hours in any 1 week, except in cases of necessity, emergency, or where public policy absolutely requires it. In such instances, the Contractor shall pay the employee at least time and a half pay:

- For all overtime in excess of 8 hours a day or 40 hours in any 1 week when the work week is 5 consecutive days, Monday through Friday; or
- For all overtime in excess of 10 hours a day or 40 hours in any 1 week when the work week is 4 consecutive days, Monday through Friday; and
- For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

For additional information on requirements for overtime and establishing a work schedule see OAR 839-025-0050 and OAR 839-025-0034.

**(2) Notice of Hours of Labor** - The Contractor shall give written notice to employees of the number of hours per day and days per week the employees may be required to work. Provide the notice either at the time of hire



or before commencement of work on this Contract, or by posting a notice in a location frequented by employees.

**(3) Exception** - The maximum hours of labor and overtime requirements under ORS 279C.540 will not apply to the Contractor's Work under this Contract if the Contractor is a party to a collective bargaining agreement in effect with any labor organization. For a collective bargaining agreement to be in effect it shall be enforceable within the geographic area of the project, and its terms shall extend to workers who are working on the project (see OAR 839-025-0054).

**(d) State Time Limitation on Claim for Overtime** - According to ORS 279C.545, any worker employed by the Contractor is foreclosed from the right to collect any overtime provided in ORS 279C.540 unless a claim for payment is filed with the Contractor within 90 Days from the completion of the contract, provided the Contractor posted and maintained a circular as specified in this provision. Accordingly, the Contractor shall:

**(1)** Cause a circular, clearly printed in boldfaced 12-point type containing a copy of ORS 279C.545, to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed to perform Work; and

**(2)** Maintain such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

**(e) Additional Requirements When Federal Funds are Involved** - When federal funds are involved, the following requirements shall apply in addition to the requirements of 00170.65(a) through 00170.65(d). The Contractor shall include these provisions in all subcontracts as well as ensure that all Subcontractors include these provisions in their lower tier subcontracts.

**(1) FHWA Requirements** - For Federal-Aid projects, the Contractor shall comply with the provisions of FHWA Form 1273, "Required Contract Provisions Federal-Aid Construction Contracts".

**(2) Minimum Wage Rates** - The Contractor shall pay each worker in each trade or occupation employed to perform any work under the contract not less than the existing State (BOLI) prevailing wage rate or the applicable federal prevailing wage rate required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.), whichever is higher. The Contractor shall include this provision in all subcontracts.

See the Project Wage Rates page included with the Special Provisions for additional information about which wage rates apply to the project and how to access the applicable wage rates.

**(3) Payroll and Certified Statements** - In addition to providing the payroll information and certified statements required under ORS 279C.845 (see 00170.65(b-2)), the Contractor and every subcontractor shall submit written certified statements that also meet the requirements in Section IV of FHWA Form 1273 except the Contractor and every subcontractor shall preserve the certified statements for a period of 6 years from the date of completion of the Contract.

**(4) Overtime** - With regard to overtime pay, the Contractor shall comply with the overtime provision affording the greatest compensation required under FHWA Form 1273 and ORS 279C.540.

#### **00170.70 Insurance:**

**(a) Insurance Coverages** - Prior to starting work hereunder, CONTRATOR, at CONTRATOR'S cost, shall secure and continue to carry until Final Acceptance, with an insurance company acceptable to CITY, the following insurance, written on an occurrence basis, in amounts not less than the limitations on liability for local public bodies provided in ORS 30.272 and ORS 30.273:

**Commercial General Liability** - CONTRATOR shall obtain, at CONTRATOR'S expense and keep in effect until Final Acceptance, Commercial General Liability Insurance covering bodily injury and property damage. Coverage shall include Contractors, subcontractors and anyone directly or indirectly employed by either.

**Pollution Liability** - If indicated by Special Provisions, Pollution Liability Insurance covering the Contractor's liability, or the liability of an appropriate subcontractor, if the coverage is obtained by the subcontractor, for bodily injury and property damage, and environmental damage resulting from sudden and accidental pollution, gradual pollution, and related clean-up costs incurred by the Contractor, or by the subcontractor if the coverage is



obtained by the subcontractor, while performing Work required by the Contract. If the coverage is obtained by the Contractor, the coverage may be written in combination with the Commercial General Liability Insurance with separate limits for Pollution Liability and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount indicated in the Special Provisions. The annual aggregate limit shall not be less than the dollar amount indicated in the Special Provisions. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

**Asbestos Liability** - If indicated by Special Provisions, the Contractor, or the subcontractor, if the coverage is obtained by the subcontractor, shall provide an Asbestos Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, The Contractor or subcontractor shall provide separate Asbestos Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance with the policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

**Lead Liability** - If indicated by Special Provisions, the Contractor, or the subcontractor, if the coverage is obtained by the subcontractor, shall provide a Lead Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, the Contractor or subcontractor shall provide separate Lead Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance with the separate policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

**Commercial Automobile Liability** - CONTRATOR shall obtain, at CONTRATOR'S expense and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits).

**Commercial Automobile Liability with Pollution Coverage** - If indicated by Special Provisions, the Contractor, or the subcontractor, if the coverage is obtained by the subcontractor, shall provide Commercial Automobile Liability Insurance with Pollution coverage covering the Contractor's liability, or the liability of an appropriate subcontractor, if the coverage is obtained by the subcontractor, for bodily injury and property damage, and environmental damage arising out of the use of all owned, non-owned, or hired vehicles while performing Work under the Contract. If the coverage is obtained by the Contractor, the coverage may be written in combination with the Commercial General Liability Insurance with separate limits for Commercial Automobile Liability with Pollution Coverage and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount indicated in the Special Provisions or the amount required by the U.S. Department of Transportation, whichever is greater. If this coverage is written in combination with the Commercial General Liability, the policy shall be endorsed to state that the Commercial General Liability annual aggregate limit shall apply separately to the Contract.

Commercial Automobile Liability with Pollution Coverage is required for this Project because the Project includes pollution related Work. If the Contractor will be performing pollution related Work, this coverage covering the Contractor must be provided. If an appropriate subcontractor, but not the Contractor, will perform the pollution related Work, Commercial Automobile Liability with Pollution Coverage covering the subcontractor, but not the Contractor, must be provided, however, the Contractor shall provide Commercial Automobile Liability insurance coverage covering the Contractor as provided in the Commercial Automobile Liability bullet above. If both the Contractor and an appropriate subcontractor will be performing pollution related Work, Commercial Automobile Liability with Pollution Coverage covering both the Contractor and the subcontractor shall be provided, and the Contractor may provide the coverage covering both the Contractor and the subcontractor, or the Contractor and the subcontractor may provide their own, separate Commercial Automobile Liability with Pollution coverages.

**(b) Tail Coverage** - If any of the required liability insurance coverages of 00170.70(a) are on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 24 months. The Contractor shall furnish certification of "tail" coverage as described, or continuous "claims made" liability coverage for 24 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Contract. If Continuous "claims made" coverage is used, the Contractor shall keep the coverage in effect for a duration of not less than 24 months from the end of the Contract. This will be a condition to the Engineer's issuance of a Third Notification.

**(c) Additional Insured** - The liability insurance coverage shall include CITY and its officers and employees as Additional Insured but only with respect to CONTRATOR'S activities to be performed under this Contract. Coverage will be primary and non-contributory with any other insurance and self-insurance. Prior to starting work under this Contract, CONTRATOR shall furnish a certificate to CITY from each insurance company providing



insurance showing that the CITY is an additional insured, the required coverage is in force, stating policy numbers, dates of expiration and limits of liability, and further stating that such coverage is primary and not contributory.

**(d) Professional Liability Insurance** - Professional Liability Insurance. The CONTRATOR shall have in force a policy of Professional Liability Insurance. The CONTRATOR shall keep such policy in force and current during the term of this contract.

**(e) Workers' Compensation** - All employers, including the Contractor and its Subcontractors, if any, that employ subject workers who are performing Work or providing labor or Materials under the Contract in the State shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. The Contractor shall ensure that each of its Subcontractors complies with these requirements.

The Contractor shall certify in the Contract that the Contractor is registered by the Oregon Workers' Compensation Division either as a carrier-insured employer, a self-insured employer, an exempt employer, or is an independent contractor who will perform the Work without the assistance of others.

The Contractor shall ensure that its insurance carrier files a guaranty contract with the Oregon Workers' Compensation Division before performing any Work.

**(f) Notice of Cancellation or Change** - There will be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from CONTRATOR or its insurer(s) to CITY. Any failure to comply with the reporting provisions of this clause will constitute a material breach of this Contract and will be grounds for immediate termination of this Agreement.

**(g) Certificate(s) of Insurance** - As evidence of the insurance coverages required by this Contract, the Contractor shall furnish Certificate(s) of Insurance to the Agency at the time(s) provided in 00130.50(a). As evidence of insurance coverages required by this Contract but permitted by the Agency under 00170.70(a) to be obtained by an appropriate subcontractor, the Contractor shall furnish Certificate(s) of Insurance to the Agency for such coverages together with the Contractor's request under 00180.21 for approval of the subcontract with that subcontractor. The Certificate(s) will specify all of the parties who are Additional Insureds. The Contractor shall obtain, or ensure that the appropriate subcontractors obtain, insurance coverages required under this Contract from insurance companies or entities acceptable to the Agency and authorized to issue insurance in the State. The Contractor, or the appropriate subcontractor, but not the Agency, shall be responsible for paying all deductibles, self-insured retentions and/or self-insurance included under these provisions.

**(h) Builders' Risk** - If indicated by Special Provision, the Contractor shall obtain, at its expense, and keep in effect during the term of the Contract, Builders' Risk insurance on an all risks of direct physical loss basis, including, without limitation, earthquake and flood damage, for an amount equal to at least the value indicated in the Special Provisions. Any deductible shall not exceed \$50,000 for each loss, except that the earthquake and flood deductible shall not exceed 5% of each loss or \$50,000, whichever is greater. The policy shall include the Agency as loss payee.

**00170.71 Independent Contractor Status** - The service or services to be rendered under this Contract are those of an independent contractor. The Contractor is not an officer, employee, or agent of the Agency as those terms are used in ORS 30.265.

**00170.72 Indemnity/Hold Harmless** - To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, the Contractor shall indemnify, defend (with counsel approved by the Agency) and hold harmless the Agency, Agency's Authorized Representatives, Design Engineer, Design Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies, and if indicated by Special Provisions that federal transportation funding is involved the State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers and members and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to the following:

- Any damage, injury, loss, expense, inconvenience or delay described in this Section 00170.



- Any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects.
- Any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract.
- The acts, errors or omissions of the Contractor, a subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder but in such case only to Contractor's or subcontractor's proportionate extent.
- Any lien filed upon the project or bond claim in connection with the Work.

Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subsection.

In claims against any person or entity indemnified under this Subsection by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Subsection shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**00170.74 Employee Drug Testing Program** - As required by ORS 279C.505(2), the Contractor shall have in place, and maintain during the period of the Contract, an employee drug-testing program. The Agency retains the right to audit and/or monitor the program. On request by the Engineer, the Contractor shall furnish a copy of the employee drug-testing program.

**00170.78 Conflict of Interest** - The Contractor shall not give or offer any gift, loan, or other thing of value to any member of the Agency's governing body or employee of the Agency in connection with the award or performance of any Contract.

The Contractor shall not rent, lease, or purchase Materials, supplies, or Equipment, with or through any Agency employee or member of the Agency's governing body.

No ex-employee of the Agency who has worked for the Agency on any phase of the Project within the prior 2 years may be employed by the Contractor to perform Work on the Project.

**00170.79 Third Party Beneficiary** - There are no third-party beneficiaries of the Contract, unless federal transportation funding is involved then the State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers and members and employees, are third-party beneficiaries of the Contract.

#### **00170.80 Responsibility for Damage to Work:**

**(a) Responsibility for Damage in General** - The Contractor shall perform Work, and furnish Materials and Equipment for incorporation into the Work, at the Contractor's own risk, until the entire Project has been completed and until Final Completion as determined by the Agency. The Contractor shall repair all damages to Work performed, Materials supplied, and Equipment incorporated into the Work, except as otherwise provided in this Section.

**(b) Repair of Damage to Work** - Until Final Completion, the Contractor shall promptly rebuild, repair, restore, and make good damages to all portions of the permanent or temporary Work. The Contractor shall perform all repairs of damage to Work at no additional cost to the Agency, except for repairs necessitated by damage caused by:

- Acts of God or Nature, as defined in Section 00110; or
- Actions of governmental authorities.



**(c) Vandalism and Theft** - Vandalism includes damage to or destruction of Work or portions of Work that remain on the Project Site resulting from vandalism, criminal mischief, arson, or other criminal or illegal behavior.

Theft includes the loss of Work or portions of Work that are lost or stolen or otherwise unaccounted for from the Project Site or from Materials or fabrication locations. The Contractor shall remain solely responsible for all losses caused by theft, including without limitation theft that occurs in conjunction with vandalism.

The Contractor shall provide protection of the Work from vandalism and theft until Final Completion.

#### **00170.82 Responsibility for Damage to Property and Facilities:**

**(a) In General** - As used in this Subsection, the term "Contractor" shall include the Contractor's agents, Subcontractors, and all workers performing Work under the Contract; and the term "damage" shall include without limitation soiling or staining surfaces by tracking or splashing mud, asphalt, and other materials, as well as damage of a more serious nature.

The Contractor shall be solely responsible for damages arising from:

- The Contractor's operations;
- The Contractor's negligence, gross negligence, or intentional wrongful acts; and
- The Contractor's failure to comply with any Contract provision.

The Agency may withhold funds due the Contractor or the Contractor's Surety until all lawsuits, actions, and claims for injuries or damages are resolved, and satisfactory evidence of resolution is furnished to the Agency.

**(b) Protection and Restoration of Agency Property and Facilities** - The following requirements apply to highways, highway Structures and other improvements that are existing, under construction, or completed. The Contractor shall:

- Provide adequate protection to avoid damaging Agency property and facilities;
- Be responsible for damage to Agency property and facilities caused by or resulting from the Contractor's operations; and
- Clean up and restore such damage by repair, rebuilding, replacement, or compensation, as determined by the Engineer.

**(c) Protection and Restoration of Non-Agency Property and Facilities** - The Contractor shall determine the location of properties and facilities that could be damaged by the Contractor's operations, and shall protect them from damage. The Contractor shall protect monuments and property marks until the Engineer has referenced their location and authorized their removal. The Contractor shall restore property or facilities damaged by its operations to the condition that existed before the damage, at no additional compensation.

The Contractor shall provide temporary facilities when needed, e.g., to maintain normal service or as directed by the Engineer, until the required repair, rebuilding, or replacement is accomplished.

The Contractor shall protect specific service signs, e.g., business logos, and tourist-oriented directional signs (TODS) from damage, whether the signs are to remain in place or be placed on temporary supports. The Contractor shall repair or replace damaged signs at no cost to the Agency. Liquidated damages will be assessed against the Contractor in the amount of \$200 per day for each sign out of service for more than 5 Calendar Days because of the Contractor's operations.

#### **00170.85 Responsibility for Defective Work** - The Contractor shall make good any defective Work, Materials or Equipment incorporated into the Work, according to the provisions of Section 00150.

**(a) Latent Defects** - The Contractor shall remain liable for all latent defects resulting from causes other than fraud or gross mistakes that amount to fraud until the expiration of all applicable statutes of limitation and ultimate repose, the Performance Bond, Warranty Bond, or Correction Period, whichever expires last. The Contractor shall remain liable for all latent defects resulting from fraud or gross mistakes that amount to fraud regardless of when



those latent defects may be discovered, and regardless of whether such discovery occurs outside any applicable statutes of limitation or ultimate repose or any applicable Performance Bond, Warranty Bond, or Correction Period.

**(b) Correction Period Warranty for Agency Projects:** - The Contractor shall warrant all Work and workmanship, including Changed Work, Additional Work, Incidental Work, On-Site Work, and Extra Work, and Materials and Equipment incorporated in the Work, for one year from the date of Second Notification (Correction Period), except that manufacturers' warranties and extended warranties according to 00170.85(c) shall not be abridged. The Correction Period warranty described herein shall include extension of the Performance Bond for a period of one year from the date of Second Notification.

The Contractor shall be responsible for meeting the technical and performance Specifications required, making good the Work, and for all repairs of damage to the Work and other improvements, natural and artificial structures, systems, equipment, and vegetation caused by, or resulting in whole or in part from occurrences beginning during the Correction Period and are the result of defects in Materials, Equipment, and workmanship. The Contractor shall be responsible for all costs associated with completing the repair of the defects and for associated Work including but not limited to permitting, mobilization, traffic control, erosion control, surface restoration, site cleanup and remediation caused by, or resulting in whole or in part from, defects in Materials, Equipment, or workmanship, and other Work determined by the Engineer to be necessary to complete the repair of the defects.

Within 10 Calendar Days of the Agency's written notice of defects, the Contractor, or the Contractor's Surety, shall vigorously and continuously correct and repair the defects and all related damage. If the Contractor or the Contractor's Surety fails to correct and repair the defects, the Agency may have the correction and repair done by others. The Contractor or Contractor's Surety shall promptly reimburse the Agency for all expenses incurred to correct and repair the defects.

In the event of an emergency, where delay could result in serious loss or damage, the Agency may make emergency corrections and repairs, without written notice. The Contractor or Contractor's Surety shall promptly reimburse the Agency for all expenses incurred to correct and repair the defects.

Corrections, repairs, replacements or changes shall be warranted for an additional one year period beginning on the date of the Agency's acceptance of the corrections, repairs, replacements or changes.

Without limiting the general applicability of other survival clauses under the Contract, this warranty provision shall survive expiration or termination of the Contract.

**(c) Manufacturer, Installer or Supplier Warranties and Guarantees:**

**(1) Manufacturer, Installer or Supplier Warranties** - For those Specification Sections referencing this 00170.85(c-1) Subsection, the Contractor shall furnish Warranties from the Manufacturer, Installer or Supplier and signed by an authorized Representative.

The warranty period will be specified in the applicable Specification Section for which it applies.

The warranty period will begin on the date the Engineer issues Second Notification unless otherwise specified in the Contract.

Corrections, repairs, replacements or changes shall be warranted for an additional Warranty period beginning on the date of the Agency's acceptance of the corrections, repairs, replacements or changes.

When the Agency makes written notification to the Manufacturer, Supplier or Installer of failure of an item covered by this warranty, the warranty period will stop for the effected item or the portion of the effected item that failed, as applicable, until the required repairs or replacements are made and accepted. All repaired or replaced items shall meet current specifications, unless otherwise specified in the Contract, and will be warranted for the remaining warranty period.

Warranty work shall be performed when weather permits. If, in the opinion of the Engineer, temporary repairs are necessary, the temporary repairs will be made by the Agency or an independent contractor at the Manufacturer's, Supplier's or Installer's expense. The Manufacturer, Supplier or Installer shall replace all temporary repairs at no additional cost to the Agency.

The Manufacturer, Supplier or Installer shall provide all required traffic control during repair or replacement of failed items at no additional cost to the Agency.



**(2) Trade Practice Guarantees** - For those Items installed on the Project that have customary trade practice guarantees, the Contractor shall furnish the guarantees to the Engineer at the completion of the Contract.

**00170.89 Protection of Utility, Fire-control, and Railroad Property and Services; Repair; Roadway Restoration:**

**(a) Protection of Utility, Fire-Control, and Railroad Property and Services; Coordination** - The Contractor shall avoid damaging the properties of Utilities, Railroads, railways, and fire-control authorities during performance of the Work. The Contractor shall cooperate with and facilitate the relocation or repair of all Utilities and Utility services, as required under 00150.50, and of Railroad and fire-control property and railways.

The Contractor shall conduct no activities of any kind around fire hydrants until the local fire-control authority has approved provisions for continued service.

The Contractor shall immediately notify any Utility, Railroad, or fire-control authority whose facilities have been damaged.

If an Entity has a valid permit from the proper authority to construct, reconstruct, or repair Utility, Railroad, or fire-control service in the Roadway, the Contractor shall allow the permit holder to perform the work.

**(b) Restoration of Roadway after Repair Work** - The Contractor shall restore the Roadway to a condition at least equal to that which existed before the repair work addressed under this Subsection was performed, as directed by the Engineer. All restoration work required as a result of Contractor's failure to protect Utilities, Railroads, railways and fire-control facilities shall be at the Contractor's expense. Restoration which constitutes Extra Work will be paid as Extra Work.

**00170.92 Fencing, Protecting Stock, and Safeguarding Excavations** - The Contractor shall be responsible for loss, injury, or damage that results from its failure to restrain stock and persons.

**(a) At the Contractor's Expense** - The Contractor shall restrain stock to lands on which they are confined using temporary fences or other adequate means. The Contractor shall provide adequate temporary fences or other protection around excavations to prevent animals and unauthorized persons from entering.

The Contractor shall repair, at Contractor's expense and to the Engineer's satisfaction, fences damaged by the Contractor's operations and the operations of the Contractor's agents, employees and Subcontractors.

**(b) At the Agency's Expense** - The Contractor shall construct fences, or move and reconstruct fences, as shown on the Contract Documents or as directed by the Engineer. The Contractor shall tear down and remove fencing within the Right-of-Way when no longer needed, as part of the removal Work described in and paid for according to Section 00310.

**00170.93 Trespass** - The Contractor shall be responsible for its own, its agents' and employees', and its Subcontractors' trespass or encroachment upon, or damage to, property during performance of the Contract.

**00170.94 Use of Explosives** - The Contractor shall comply with all Laws pertaining to the use of explosives. The Contractor shall notify anyone having facilities near the Contractor's operations of Contractor's intended use or storage of explosives. The Contractor shall be responsible for all damage resulting from its own, its agents' and employees', and its Subcontractors' use of explosives. (see 00330.41(e) and Section 00335)

**00170.95 Unlawful Discrimination Policy - Agency** - It is the policy of the City of WARRENTON that no person shall be denied the benefits of or be subjected to discrimination in any City program, service, or activity on the grounds of age, disability, race, religion, color, national origin, sex, sexual orientation, gender identity and expression. The City of WARRENTON also requires its contractors and grantees to comply with this policy.

## Section 00180 - Prosecution and Progress

**00180.00 Scope** - This Section consists of requirements for assignment of the Contract, subcontracting, time for performance, Contract responsibility, suspensions, terminations, and related provisions.

**00180.05 Assignment/Delegation of Contract** - Unless the Agency gives prior written consent, the Contractor shall not assign, delegate, sell, or transfer to any Entity, or otherwise dispose of any Contract rights or obligations, including without limitation:

- The power to execute or perform the Contract; or
- Any of its right, title or interest in the Contract.

Any attempted assignment, delegation, or disposition without prior Agency consent shall be void.

Such Agency consent will not normally be given except for the assignment of funds due under the Contract, as provided in 00180.06.

If written Agency consent is given to assign, delegate, or otherwise dispose of any Contract rights or obligations, it shall not relieve the Contractor or its Surety of any part of their responsibility under the Contract.

**00180.06 Assignment of Funds Due under the Contract** - Assignment of funds due or to become due under the Contract to the Contractor will not be permitted unless:

- The assignment request is made on the form acceptable to the Agency;
- The Contractor secures the written consent of the Contractor's Surety to the assignment; and
- The Engineer approves the assignment.

**00180.10 Responsibility for Contract** - The Contractor shall direct and coordinate the operations of its employees, Subcontractors and agents performing Work, and see that the Engineer's orders are carried out promptly. The Contractor's failure to direct, supervise and control its employees, Subcontractors and agents performing Work will result in one or more of the following actions, or other actions as the Engineer deems appropriate:

- Suspension of the Work;
- Withholding of Contract payments, as necessary to protect the Agency;
- Ordering removal of individuals from the Project Site; or
- Termination of the Contract.

Action by the Agency under this provision will not prejudice any other remedy it may have.

**00180.15 Agency's Right to Do Work at Contractor's Expense** - Except as otherwise provided in 00150.75 and 00220.60, if the Contractor neglects to prosecute the Work properly or fails to perform any provision of the Contract, the Agency may, after 2 Calendar Days' written notice, correct the deficiencies at the Contractor's expense. In situations where the Engineer reasonably believes there is danger to life or property, the Agency may immediately and without notice correct the deficiencies at the Contractor's expense.

Action by the Agency under this provision will not prejudice any other remedy it may have.

### 00180.20 Subcontracting Limitations:

**(a) General** - The Contractor's own organization shall perform Work amounting to at least the percentage of the original Contract Amount as indicated in the Special Provisions. The value of subcontracted Work is the full compensation to be paid to the Subcontractor(s) for all pay items in the Subcontract(s).



**(b) Own Organization** - The term "own organization", as used in Section 00180, includes only employees of the Contractor, Equipment owned or rented by the Contractor, Incidental rental of operated Equipment, and Materials and Equipment to be incorporated into the Work purchased or produced by the Contractor.

#### **00180.21 Subcontracting:**

**(a) Substitution of Disclosed Subcontractors** - The Contractor may only substitute a previously disclosed first-tier Subcontractor according to the provisions of ORS 279C.585. The Contractor shall provide the Engineer with a written notification that identifies the name of the proposed new Subcontractor and the reason for the substitution. Authorized reasons for substitution are limited to the following circumstances (see ORS 279C.585(1) through ORS 279C.585(10)):

- The disclosed Subcontractor fails or refuses to execute a written contract that is reasonably based either upon the Project Plans and Specifications, or the terms of the Subcontractor's written Bid, after having had a reasonable opportunity to do so;
- The disclosed Subcontractor becomes bankrupt or insolvent;
- The disclosed Subcontractor fails or refuses to perform the contract;
- The disclosed Subcontractor fails or refuses to meet the bond requirements of the prime Contractor that had been identified prior to the Bid submittal;
- The Contractor demonstrates to the Agency that the Subcontractor was disclosed as the result of an inadvertent clerical error;
- The disclosed Subcontractor does not hold a license from the Construction Contractors Board and is required to be licensed by the board;
- The Contractor determines that the Work performed by the disclosed Subcontractor is not in substantial compliance with the Plans and Specifications, or that the Subcontractor is substantially delaying or disrupting the progress of the Work;
- The disclosed Subcontractor is ineligible to work on a public improvement according to the applicable statutory provisions;
- The substitution is for "good cause" as defined by State Construction Contractors Board rule; or
- The substitution is reasonably based on the Contract alternates chosen by the Agency.

**(b) Terms of Subcontracts** - Subcontracts shall provide that work performed under the subcontract shall be conducted and performed according to the terms of the Contract. Compliance with 00170.07 is required. All subcontracts, including Contractor's with the first-tier Subcontractors and those of the first-tier Subcontractors with their subcontractors, and any other lower tier subcontracts shall contain a clause or condition that if the Contractor or a subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580. Additionally, according to the provisions of ORS 279C.580, subcontracts shall include:

**(1)** A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under the subcontract within 10 Calendar Days out of amounts the Agency pays to the Contractor under the Contract.

**(2)** A clause that requires the Contractor to provide the first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor.

**(3)** A clause that requires the Contractor, except as otherwise provided in this subsection, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:

- Notifies the Subcontractor in writing at least 45 Calendar days before the date on which the Contractor makes the change; and
- Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.



(4) An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier Subcontractor within 30 Calendar Days after receiving payment from the Agency, to pay the first-tier Subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under 00180.21(d-1). The Contractor or first-tier Subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from the Agency or the Contractor when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and ends on the date on which the amount due is paid; and shall be computed at the rate specified in 00170.10(c).

(5) A clause that requires the Contractor's first-tier Subcontractor to include a payment clause and an interest penalty clause that conform to the standards of ORS 279C.580 (see 00180.21(d-1) and 00180.21(d-4)) in each of the first-tier Subcontractor's subcontracts and to require each of the first-tier Subcontractor's subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or Material supplier.

These payment clauses shall require the Contractor to return all retainage withheld from the Subcontractor, whether held by the Contractor or the Agency, as specified in 00195.50(d).

As required by ORS 279C.800 through ORS 279C.870, subcontracts shall include:

- A provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work on the Project, unless exempt.
- A provision requiring that the workers shall be paid not less than the specified minimum hourly rate of wage.

(c) **Contractor's Responsibilities** - The Contractor shall remain solely responsible for administration of the subcontract, including but not limited to:

- Performance of subcontracted Work;
- Progress of subcontracted Work;
- Payments for accepted subcontracted Work; and
- Disputes and claims for additional compensation regarding subcontracted Work.

It shall be the direct responsibility of the Contractor to ensure that each and every Subcontractor will not only be issued a complete and current set of Plans and Specifications, but also that these Plans and Specifications are on the project site and in use by the Subcontractor when it is performing its portion of the project.

Subcontracted Work shall not create a contract between the Agency and the Subcontractor, will not convey to the Subcontractor any rights against the Agency, and will not relieve the Contractor or the Contractor's Surety of any of their responsibilities under the Contract.

(f) **Failure to Comply** - Failure to comply with 00180.21 will be cause for the Engineer to take action reasonably necessary to obtain compliance. This action may include, but is not limited to:

- Suspension of the Work;
- Withholding of Contract payments as necessary to protect the Agency; and
- Termination of the Contract.

**00180.22 Payments to Subcontractors and Agents of the Contractor** - To the extent practicable, the Contractor shall pay in the same units and on the same basis of measurement as listed in the Schedule of Items for subcontracted Work or other Work not done by the Contractor's own organization. The Agency will not be responsible for any overpayment or losses resulting from overpayment by the Contractor to Subcontractors and to its other agents, work providers, service providers, and trucking service providers.

If requested in writing by a first-tier Subcontractor, the Contractor shall send to the Subcontractor, within 10 Calendar Days of receiving the request, a copy of that portion of any invoice or request for payment submitted to the Agency, or pay document provided by the Agency to the Contractor, specifically related to any labor, Equipment, or Materials supplied by the first-tier Subcontractor.



**00180.30 Materials, Equipment, and Work Force** - The Contractor shall furnish suitable and sufficient Materials, Equipment, and personnel to properly prosecute and complete the Work. The Contractor shall use only Equipment of adequate size and condition to meet the requirements of the Work and Specifications, and to produce a satisfactory quality of Work. Upon receipt of the Engineer's written order, the Contractor shall immediately remove, and not use again on the Project without the Engineer's prior written approval, Equipment that, in the Engineer's opinion, fails to meet Specifications or produce a satisfactory product or result.

The work force shall be trained and experienced for the Work to be performed. Upon receipt of the Engineer's written order, the Contractor shall immediately remove from the Project Site, and shall not employ again on the Project without the Engineer's prior written approval, any supervisor or employee of the Contractor or any subcontractor who, in the Engineer's opinion, does not perform satisfactory Work or whose conduct interferes with the progress of the Work.

If the Contractor fails to remove Equipment or persons as ordered, or fails to furnish suitable and sufficient Materials, Equipment and personnel for the proper prosecution of the Work, the Engineer may suspend the Work by written notice until such orders are complied with and such deficiencies are corrected, or the Engineer may terminate the Contract under the provisions of 00180.90(a).

**00180.31 Required Materials, Equipment, and Methods** - The Engineer's decisions under this Section are final.

**(a) General** - When the Equipment and methods to be used are not specified in the Contract, any Equipment or methods that accomplish the Work as required by the Contract will be permitted.

When the Contract specifies certain Equipment or methods, the Contractor shall use the Equipment or methods specified unless otherwise authorized by the Engineer in writing.

**(b) Substitution of Materials and Equipment to be Incorporated into the Work** - After execution of the Contract, the Engineer may approve substitution of Materials and Equipment to be incorporated into the Work as follows:

**(1) Reasons for Substitution** - The Engineer will consider substitution only if:

- In the judgement of the Engineer, the proposed Materials or Equipment are equal to or superior to the specified items in construction, efficiency and utility; or
- Due to reasons beyond the control of the Contractor, the specified Materials or Equipment cannot be delivered to the Project in sufficient time to complete the Work in proper sequence.

**(2) Submittal of Request** - The Contractor shall submit requests for substitution to the Engineer, including manufacturers' brochures and other information needed to verify equality of the proposed item(s).

**(c) Substitution of Equipment Specified to Perform Work** - The Agency encourages development of new or improved Equipment and innovative use of Equipment. When the Specifications require Equipment of a particular size or type to be used to perform certain portions of the Work, the Contractor may submit a request to the Engineer to use Equipment of a different size or type. The request will not be considered as a cost reduction proposal under 00140.70. The request shall:

- Be in writing and include a full description of the Equipment proposed and its intended use;
- Include the reasons for requesting the substitution; and
- Include evidence, obtained at the Contractor's expense and satisfactory to the Engineer, that the proposed Equipment is capable of functioning as well as or better than the specified Equipment.

The Engineer will consider the Contractor's request and will provide a written response to the Contractor, either permitting or denying use of the proposed Equipment.

Permission may be granted on a trial basis to test the quality of Work actually produced, subject to the following:

- There will be no cost to the Agency, either in Contract Amount or in Contract Time;



- The permission may be withdrawn by the Engineer at any time if, in the Engineer's opinion, the Equipment is not performing in all respects equivalent to the Equipment specified in the Contract;
- If permission is withdrawn, the Contractor shall perform the remaining Work with the originally-specified Equipment; and
- The Contractor shall remove and replace nonspecification Work resulting from the use of the Contractor's proposed Equipment, or otherwise correct it as the Engineer directs, at no additional compensation.

**(d) Substitution of Methods** - The Agency encourages development of new, improved, and innovative construction methods. When the Plans or Specifications require a certain construction method for a portion of the Work, the Contractor may submit a request for a change by following the provisions of 00140.70, "Cost Reduction Proposals".

#### **00180.40 Limitation of Operations:**

**(a) In General** - The Contractor shall comply with all Contract provisions and shall:

- Conduct the Work at all times so as to cause the least interference with traffic, and
- Not begin Work that may allow damage to Work already started.

**(b) On-Site Work** - The Contractor shall not begin On-Site Work until the Contractor has:

- Received Notice to Proceed;
- Filed with the Construction Contractors Board the public works bond as required in 00170.20;
- An approved Project Work schedule;
- An approved Traffic Control Plan;
- An approved Spill Prevention Control and Countermeasure Plan, if required;
- An approved Pollution Control Plan;
- An approved Erosion and Sediment Control Plan;
- Met with the Engineer at the required preconstruction conference; and
- Assembled all Materials, Equipment, and labor on the Project Site, or has reasonably assured that they will arrive on the Project Site, so the Work can proceed according to the Project Work schedule.

**00180.41 Project Work Schedules** - The Contractor shall submit a Project Work schedule meeting the requirements of this Subsection to the Engineer. The Project Work schedule is intended to identify the sequencing of activities and time required for prosecution of the Work. The schedule is used to plan, coordinate, and control the progress of construction. Therefore, the Project Work schedule shall provide for orderly, timely, and efficient prosecution of the Work, and shall contain sufficient detail to enable both the Contractor and the Engineer to plan, coordinate, analyze, document, and control their respective Contract responsibilities.

The Contractor shall submit a schedule or plan for each activity that is behind schedule showing, in sufficient detail, the proposed corrective action to complete Contract Work within the Contract Time. Sufficient detail shall include all required double shifts, overtime work, or combination of both.

Contractor's activity related to developing, furnishing, monitoring, and updating these required schedules is Incidental.

The Contractor shall submit a supplemental "look ahead" Project Work schedule to the Engineer prior to or at each Progress Meeting. The "look ahead" Project Work schedule is supplemental to the Type A, B, or C schedule specified below. The supplemental "look ahead" Project Work schedule shall:

- Identify the sequencing of activities and time required for prosecution of the Work.
- Provide for orderly, timely, and efficient prosecution of the Work.
- Contain sufficient detail to enable both the Contractor and the Engineer to plan, coordinate, analyze, document, and control their respective Contract responsibilities.



The supplemental "look ahead" Project Work schedule shall be written in common terminology and show the planned Work activities broken down into logical, separate activities by area, stage, and size and include the following information:

- The resources the Contractor, subcontractors, or services will use.
- The locations of each activity that will be done including the limits of the work by mile posts, stations, or other indicators.
- The time frames of each activity by Calendar Days, shifts, and hours.
- All anticipated shoulder, lane, and road closures.

At a minimum, the Contractor shall prepare a bar chart that:

- Shows at least 3 weeks of activity including the week the bar chart is issued.
- Uses a largest time scale unit of 1 Calendar Day. Smaller time scale units may be used if needed.
- Is appropriate to the activities.
- Identifies each Calendar Day by month and day.

Include the Contract name, Contract number, Contractor's name, and date of issue on each page of the bar chart.

The Contractor shall submit the supplemental "look ahead" Project Work schedule starting at First Notification and continuing until Second Notification has been issued and all punch list items and final trimming and clean-up has been completed. The Contractor shall meet with the Engineer each week to review the supplemental "look ahead" Project Work schedule. If the Engineer or the Contractor determines that the current supplemental "look ahead" Project Work schedule requires changes or additions, either notations can be made on the current schedule or the Engineer may require the submittal of a revised supplemental "look ahead" Project Work schedule. Review of the current and subsequent supplemental "look ahead" Project Work schedules does not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

One of the following Type "A", "B", or "C" schedules will be required under the Contract. The type of schedule will be identified in the Special Provisions.

**(a) Type "A" Schedule** - When a Type "A" schedule is required, the Contractor shall do the following:

**(1) Schedule** -At the preconstruction conference, the Contractor shall provide to the Engineer four copies of a Project Work schedule, including a time-scaled bar chart and narrative, showing:

- Expected beginning and completion dates of each activity, including all staging; and
- Elements of the Traffic Control Plan as required under 00225.05.

The schedule shall show detailed Work activities as follows:

- Construction activities;
- The time needed for completion of the utility relocation work;
- Submittal and approval of Materials samples and shop drawings;
- Fabrication, installation, and testing of special Materials and Equipment; and
- Duration of Work, including completion times of all stages and their sub phases.

For each activity, the Project Work schedule shall list the following information:

- A description in common terminology;
- The quantity of Work, where appropriate, in common units of measure;
- The activity duration in Calendar Days; and
- Scheduled start, completion, and time frame shown graphically using a time-scaled bar chart.

The schedule shall show the Work broken down into logical, separate activities by area, stage, or size. The duration of each activity shall be verifiable by manpower and Equipment allocation, in common units of measure, or by delivery dates.



The bar chart shall be prepared as follows:

- The length of bar shall represent the number of workdays scheduled.
- The time scale shall be appropriate for the duration of the Contract.
- The time scale shall be in Calendar Days.
- The smallest unit shown shall be 1 Calendar Day.
- The first day and midpoint of each month shall be identified by date.
- Distinct symbols shall be used to denote multiple shift, holiday, and weekend Work.

Each page of the bar chart shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the bar chart shall be drawn on a reasonable size of paper up to a maximum of 36 inch by 36 inch, using multiple sheets when needed.

Within 7 Calendar Days after the preconstruction conference, the Engineer and the Contractor shall meet to review the Project Work schedule as submitted. The Engineer will review the schedule for compliance with all Contract Time limitations and other restraints. Review of this and subsequent schedules by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract. Within 10 Calendar Days of this meeting, the Contractor shall resubmit to the Engineer four copies of the Project Work schedule, including required revisions.

**(2) Review by the Engineer** - The Project Work schedule may need revision as the Work progresses. Therefore, the Contractor shall periodically review the Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the Project Work schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be held between the Engineer and the Contractor. At this meeting, the Contractor and the Engineer shall review Project events and any changes for their effect on the Project Work schedule.

The Contractor shall compile an updated Project Work schedule incorporating any changes to the Project completion time(s). The bar chart shall reflect the updated information. The Contractor shall submit four copies of the updated Project Work schedule to the Engineer within 7 Calendar Days after the meeting. The report shall include without limitation the following:

- Sufficient narrative to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule; and
- Proposed corrective actions.

**(b) Type "B" Schedule** - When a Type "B" Schedule is required, the Contractor shall do the following:

**(1) Initial Schedule** - 5 Calendar Days prior to the preconstruction conference, the Contractor shall provide to the Engineer four copies of a time-scaled bar chart Project Work schedule showing:

- Expected beginning and completion date of each activity, including all staging; and
- Elements of the Traffic Control Plan as required under 00225.05.

The initial schedule shall show all Work intended for the first 60 Days of the Contract to the level of detail described in (2) below, and shall show the priority and interdependence (sequencing and network logic) of all major segments of the remainder of the Work.

**(2) Detailed Schedule** - In addition to the above requirements, and within 30 Calendar Days after the Notice to Proceed, the Contractor shall provide the Engineer one digital copy and four paper copies of a detailed time-scaled bar chart Project Work schedule indicating the critical course of the Work. The digital copy shall be compatible with MS Project 2003, Primavera P3, SureTrak Project Manager 3.0, or another scheduling program approved by the Engineer.

Detailed work schedule activities shall include the following:

- Construction activities;



- The time needed for completion of the utility relocation work;
- Submittal and approval of Material samples and shop drawings;
- Procurement of critical Materials;
- Fabrication, installation, and testing of special Material and Equipment; and
- Duration of Work, including completion times of all stages and their sub phases.

For each activity, the Project Work schedule shall list the following information:

- A description in common terminology;
- The quantity of Work, where appropriate, in common units of measure;
- The activity duration in normal workdays; and
- Scheduled start, completion, and time frame shown graphically using a time-scaled bar chart.

The schedule shall show the Work broken down into logical, separate activities by area, stage, or size. The duration of each activity shall be verifiable by manpower and Equipment allocation, in common units of measure, or by delivery dates.

The bar chart shall be prepared as follows:

- The length of bar shall represent the number of normal workdays scheduled.
- The time scale shall be appropriate for the duration of the Contract.
- The time scale shall be in normal workdays (every day except Saturday, Sunday, and legal holidays).
- The smallest unit shown shall be 1 Calendar Day.
- The first day and midpoint of each month shall be identified by date.
- Distinct symbols shall be used to denote multiple shift, holiday, and weekend Work.

The bar chart drawing(s) shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the bar chart shall be drawn on a reasonable size of paper up to a maximum of 36 inch x 36 inch, using multiple sheets when needed.

Within 10 Calendar Days after submission of the Project schedule the Engineer and the Contractor shall meet to review the Project schedule as submitted. Within 10 Days of the review meeting, the Contractor shall resubmit to the Engineer one digital and four paper copies of the Project schedule, including required revisions.

The accepted Project schedule shall represent all Work, as well as the planned sequence and time for the Work. Review of this and subsequent schedules by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

**(3) Review and Reporting** - The Project Work schedule may require revision as the Work progresses. Therefore, the Contractor shall monitor and when necessary revise the Project Work schedule as follows:

**a. Review with the Engineer** - The Contractor shall perform ongoing review of the Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the Project Work schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be held between the Engineer and the Contractor. At this meeting, the Contractor and the Engineer shall review Project events and any changes for their effect on the Project Work schedule. After any necessary action has been agreed upon, the Contractor shall make required changes to the Project Work schedule.

The Contractor shall collect information on all activities worked on or scheduled to be worked on during the previous report period, including shop drawings, Material procurement, and Contract Change Orders that have been issued. Information shall include commencement and completion dates on activities started or completed, or if still in progress, the remaining time duration.

The Contractor shall develop detailed sub-networks to incorporate changes, Additional Work, and Extra Work into the Project Work schedule. Detailed sub-networks shall include all necessary activities and logic

connectors to describe the Work and all restrictions on it. The restraints shall include those activities from the Project Work schedule that initiated the sub-network as well as those restrained by it.

The Contractor shall evaluate this information and compare it with the Contractor's project schedule. If necessary, the Contractor shall make an updated bar chart schedule to incorporate the effect changes may have on the Project completion time(s). For any activity that has started, the Contractor shall add a symbol to show the actual date the activity started and the number of normal workdays remaining until completion. For activities that are finished, a symbol shall be added to show the actual date. The Contractor shall submit one digital and four paper copies of the updated bar chart to the Engineer within 7 Days after the progress meeting, along with a progress report as required by "b." below.

**b. Progress Report** - The Contractor shall submit a progress report to the Engineer each month. The report shall include the following:

- Sufficient narrative to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule; and
- Proposed corrective actions.

**(c) Type "C" Schedule** - When a Type "C" Schedule is required, the Contractor shall do the following:

**(1) Initial Schedule** - 10 Calendar Days prior to the preconstruction conference, the Contractor shall provide to the Engineer one digital copy and four paper copies of a time-scaled bar chart Project Work schedule. The digital copy shall be compatible with MS Project 2003, Primavera P3, SureTrak Project Manager 3.0, or another scheduling program approved by the Engineer. The initial schedule shall show:

- The expected beginning and completion date of each activity, including all stages and phases;
- The time needed for completion of the utility relocation work; and
- The elements of the traffic control plan as required under 00225.05.

A logic diagram and a time-scaled bar chart will be acceptable in lieu of a time-scaled logic diagram.

The initial schedule shall show all Work intended for the first 60 Days of the Contract to the level of detail described in (2) below, and shall show the priority and interdependence (sequencing and network logic) of all major segments of the remainder of the Work.

**(2) Detailed Project Work Schedule** - In addition to the above requirements, and within 30 Calendar Days after First Notification, the Contractor shall provide the Engineer one digital copy and four paper copies of a detailed time-scaled critical path method (CPM) network Project Work schedule and computer analysis printout, both clearly indicating the critical path. The digital copy shall be compatible with MS Project 2003, Primavera P3, SureTrak Project Manager 3.0, or another scheduling program approved by the Engineer. The first submitted detailed time-scaled critical path method (CPM) network Project Work schedule shall also contain a listing of the quantity of Work for each activity, when appropriate, in common units of measure.

Detailed work schedule activities shall include the following:

- Construction activities;
- Any limitations of operation specified in 00180.40;
- The time needed for completion of the utility relocation work;
- Implementation of TCP for each stage and phase;
- Submittal and approval of Material samples, mix designs, and shop drawings;
- Agency timeframes to process and return Contractor submitted plans, working drawings, equipment lists and other submittals;
- Procurement of critical Materials;
- Fabrication, installation, and testing of special Material and Equipment;
- Duration of Work, including completion times of all stages and their sub-phases; and
- Specified cure times for all concrete elements.



The activities shall be separately identifiable by coding or use of sub-networks or both. The duration of each activity shall be verifiable and consistent with the description in the Project narrative required in (3) below.

Detailed sub-networks shall include all necessary activities and logic connectors to describe the Work and all restrictions on it. In the restraints, include those activities from any Project Work schedule that initiated the sub-network as well as those restrained by it.

The time scale used on the Contractor's detailed time-scaled critical path method (CPM) network Project Work schedule shall be appropriate for the duration of the activities and the Project duration. The time scale shall be in normal workdays, defined as every day except Saturday, Sunday and legal holidays, with calendar dates identified no less than the first and midpoint of each calendar month. The smallest unit shown shall be 1 Day. The network shall show the length of the activity or part scaled to accurately represent the number of normal workdays scheduled. Distinct symbols or graphics shall be used to show multiple shift, holiday, or weekend work.

The schedule network drawing(s) shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the drawings shall be on a reasonable size of paper up to a maximum of 36 inch x 36 inch, using multiple sheets when needed.

The Contractor shall include a tabulation of each activity in the computer mathematical analysis of the network diagram. The following information represents the minimum required for each activity:

- Event (node) number(s) for each activity;
- Maintain event (node) numbers throughout the Project;
- Activity description;
- Original duration of activities (in normal workdays);
- Estimated remaining duration of activities (in normal workdays);
- Earliest start date and actual start date (by calendar date);
- Earliest finish date and actual finish date (by calendar date);
- Latest start date (by calendar date);
- Latest finish date (by calendar date); and
- Slack or float time (in workdays).

Computer print-outs shall consist of at least a node sort and an "early start/total-float" sort.

Within 14 Calendar Days after submission of the detailed time-scaled critical path method (CPM) network Project Work schedule, the Engineer and the Contractor shall meet to review the detailed time-scaled critical path method (CPM) network Project Work schedule as submitted. Within 7 Calendar Days of the meeting, the Contractor shall resubmit to the Engineer one digital and four paper copies of the detailed time-scaled critical path method (CPM) network Project Work schedule, including required revisions.

This first accepted detailed time-scaled critical path method (CPM) network Project Work schedule, also called the accepted Project Work schedule, shall represent all Work, as well as the planned sequence and time for the Work. Review and acceptance of any Project Work schedules and Project narratives by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

**(3) Project Narrative** - In addition to the above requirements, and within 30 Calendar Days after First Notification, the Contractor shall provide to the Engineer a final written Project narrative that discusses the planning, coordinating, scheduling and resourcing of the Work. The Project narrative shall include the following written description:

- Plans for staging the project.
- All critical activities.
- All near critical activities defined as those with less than 30 Days of float.

- All subcontractor activities that are critical, near critical, and those that are greater than two weeks in duration.
- Labor resourcing, by stage and phase, to include the number of crews, average crew size and planned night/weekend shifts including that of subcontractors.
- Equipment allocation, by stage and phase to include mobilization, demobilization and planned activities including that of subcontractors.
- Notifications required under the Contract during each stage and phase which may include but is not limited to road closures, lanes closures, night work, cold plane pavement removal, and pile driving.
- Provide discussion on addressing reasonably predictable weather conditions and their impact on all weather sensitive activities. Also, provide discussion on other weather limitations that may affect the project schedule.
- Submittal and approval of material samples, mix designs, and shop drawings.
- Procurement of critical materials.
- Plans for dealing with "unique" construction items.
- Coordination of utilities and any immediate concerns for impacts/delays.
- Constructability issues.
- Cost Reduction Proposals and/or immediate requests for changes to the specifications.
- Concerns/issues that need to be addressed within the first 90 Days following First Notification.

The accepted Project narrative shall represent all critical and near critical Work, as well as the planned sequence and time for the Work.

**(4) Review and Reporting** - The Project Work schedule may require revision as the Work progresses. Therefore, the Contractor shall monitor and when necessary revise the Project Work schedule as follows:

**a. Review with the Engineer** - The Contractor shall perform ongoing review of the accepted Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the accepted Project Work schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be held between the Engineer and the Contractor. At this meeting, the Contractor and the Engineer shall review Project events and any changes for their effect on the accepted Project Work schedule. After any necessary action has been agreed upon, the Contractor shall make required changes to the accepted Project Work schedule and associated Project narrative. Upon acceptance by the Engineer, this will become the new accepted Project Work schedule and associated Project narrative.

The Contractor shall collect information on all activities worked on or scheduled to be worked on during the previous report period, including shop drawings, Material procurement, and Contract Change Orders that have been issued. Information shall include actual start and completion dates on activities started or completed, or if still in progress, the remaining time duration.

The Contractor shall develop detailed sub-networks to incorporate changes, Additional Work, and Extra Work into the Project Work schedule. Detailed sub-networks shall include all necessary activities and logic connectors to describe the Work and all restrictions on it. The restraints shall include those activities from the Project Work schedule that initiated the sub-network as well as those restrained by it. The procedure for acceptance of the revised or updated Project Work schedule as the new accepted Project Work schedule will be as provided above.

The Contractor shall evaluate this information each month and compare it with the accepted Project Work schedule. The Contractor shall make an updated bar chart schedule to incorporate the effect changes may have on the Project completion time(s). For any activity that has started, the Contractor shall add a symbol to show the actual date the activity started and the number of normal workdays remaining until completion. For activities that are finished, a symbol shall be added to show the actual date. The Contractor shall submit, digitally and in paper, copies of the updated bar chart to the Engineer within 7 Days after the progress meeting, along with a progress report as required by "b." below.

**b. Progress Report** - Each month the Contractor shall submit a progress report and an update of the Project Work schedule to the Engineer. The report and updated schedule shall be submitted both digitally and in paper copy and shall include the following:



- A sufficient description, in narrative form, to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule;
- Proposed corrective actions;
- Proposals to keep the Project on schedule in the event of a delay; and
- Any changes to the logic as compared to the accepted Project Work schedule.

**(d) Substitution of Schedules** - When a Type "A" schedule is required, a Type "B" or Type "C" schedule may be substituted for the Type "A" schedule.

When a Type "B" schedule is required, a Type "C" schedule may be substituted for the Type "B" schedule.

**(e) Specified Contract Time Not Superseded by Schedule Revisions** - The completion dates in any Project Work schedule and any revised or updated Project Work schedules shall be within the Contract Time(s) specified for the Project, or within adjusted Contract Times approved according to 00180.80(c). Acceptance of any Project Work schedule or any revised or updated Project Work schedules shall not constitute approval of any completion dates that exceed such Contract Time(s). If the Contractor believes that additional Contract Time is due, the Contractor shall submit, with a revised Project Work schedule, a request for adjustment of Contract Time according to 00180.80(c). A request for an adjustment of Contract Time will be evaluated using the most recently accepted Project Work schedule.

**(f) Float Time** - Float time shown on the Project Work schedule, including any time between a Contractor's scheduled completion date and the specified Contract Time(s), does not exist for the exclusive use of either party to the Contract and belongs to the Project.

**(g) Schedules Do Not Constitute Notice** - Submittal of a Project Work schedule, with supporting Project narrative, does not constitute or substitute for any notice the Contractor is required under the terms of the Contract to give the Agency.

**(h) Failure to Provide Schedule** - The Project Work schedule is essential to the Agency. The Contractor's failure to provide the schedule, schedule information, progress reports, Project narratives, or schedule updates when required will be cause to suspend the Work, or to withhold Contract payments as necessary to protect the Agency, until the Contractor provides the required information to the Engineer.

**00180.42 Preconstruction Conference** - Unless otherwise approved in writing by the Engineer, before any Work is performed and within 7 Calendar Days of the Notice to Proceed, the Contractor shall meet with the Engineer for a preconstruction conference at a time mutually agreed upon.

**00180.43 Commencement and Performance of Work** - From the time of commencement of the Work to the time of Final Acceptance the Contractor shall:

- Provide adequate Materials, Equipment, labor, and supervision to perform and complete the Work;
- Perform the Work as vigorously and as continuously as conditions permit, and according to a Project Work schedule that ensures completion within the Contract Time or the adjusted Contract Time;
- Not voluntarily suspend or slow down operations without prior written approval from the Engineer; and
- Not resume suspended Work without the Engineer's written authorization.

**00180.44 Project Meetings** - The Contractor shall participate in conferences and meetings for the purposes of addressing issues related to the Work, reviewing and coordinating progress of the Work and other matters of common interest to the Contractor, Engineer and Agency.

- (a) Meeting Participants** - Representatives of entities participating in meetings shall be qualified and authorized to act on behalf of entity each represents.

- (b) Meet in Agency's meeting room facility, or in a location otherwise agreed to by Agency and Contractor.
- (c) Engineer will distribute to each anticipated participant written notice and agenda of each meeting at least 4 days before meeting.
- (d) Require attendance of Contractor's superintendent and project manager, and Subcontractors who are or are proximate to be actively involved in the Work, or who are necessary to agenda.
- (e) Engineer will invite agencies, utility companies or others when the Work affects their interests, and others necessary to agenda.
- (f) Engineer will record minutes of meeting and distribute copies of minutes within seven days of meeting to participants and interested parties. Contractor shall advise Engineer within two days of receipt of meeting minutes if Contractor does not agree with content of minutes.

**(g) Progress Meetings**

- (1) Purpose of Progress Meetings: To expedite work of subcontractors or other organizations that are not meeting scheduled progress, resolve conflicts, and coordinate and expedite execution of the Work.
- (2) Attend regularly scheduled bi-weekly progress meetings conducted by Engineer.
- (3) Review progress of the Work, Progress Schedule, 3-week look-ahead schedule, narrative report, Application for Payment, record documents, and additional items of current interest that are pertinent to execution of the Work.
- (4) Verify:
  - Actual start and finish dates of completed activities since last progress meeting.
  - Durations and progress of activities not completed.
  - Reason, time, and cost data for Change Order Work that will be incorporated into Progress Schedule and Application for Payment.
  - Percentage completion of items on Application for Payment.
  - Reasons for required revisions to Progress Schedule and their effect on Contract Time and Contract Amount.
- (5) Review status of Requests for Clarification/Information and Submittals review.
- (6) Discuss Project safety and security.
- (7) Discuss traffic control.
- (8) Discuss potential problems which may impede scheduled progress and corrective measures.

**(h) Coordination Meetings**

- (1) Purpose of Coordination Meetings: To coordinate the Work of this Contract with the work of the Agency and with work of other contractors.

**(i) Pre-Event Meetings**

- (1) Prior to start of critical activities, the Contractor shall schedule a meeting with Engineer to review applicable specifications and drawings, coordination of inspection requirements and other key activities.

**(j) Pre-Survey Conference**



- (1) The Contractor, applicable subcontractors, Contractor's surveyor, and Agency's surveyor shall meet with the Engineer two weeks prior to beginning survey work. The purpose of the meeting is to discuss methods and practices of accomplishing the survey work.

**(k) Other Meetings**

- (1) The Contractor shall prepare for and attend other meetings as identified elsewhere in the Contract Documents.

**00180.50 Contract Time to Complete Work:**

**(a) General** - The time allowed to complete the Work or Pay Item is stipulated in the Special Provisions, and will be known as the "Contract Time". (see 00110.20)

**(b) Kinds of Contract Time** - The Contract Time will be expressed in one or more of the following ways:

**(1) Fixed Date Calculation** - The calendar date on which the Work or Pay Item shall be completed; or

**(2) Calendar Day Calculation** - The number of Calendar Days from a specified beginning point in which the Work or Pay Item shall be completed.

**(3) Work Day Calculation** - The number of Work Days from a specified beginning point in which the Work or Pay item shall be completed.

**(c) Beginning of Contract Time** - When the Contract Time is stated in Calendar Days, counting of Contract Calendar Days will begin with the first Calendar Day following the date of the Notice to Proceed. When the Contract Time is stated in Work Days, counting of Contract Work Days will begin with the first Work Day following the date of the Notice to Proceed.

**(d) Recording Contract Time** - All Contract Time will be recorded and charged to the nearest one-half Day.

Contract Times may be extended because of delays in the completion of the Work due to abnormal weather conditions provided that the Contractor shall, within 10 days of the beginning of such delay, notify Engineer in writing of the cause of the delay and request an extension of time. Such requests shall be accompanied with supporting documentation referenced to the NOAA INDEX weather in the Project vicinity. Engineer will make recommendations to Agency to extend the Contract Times for completing the Work when, in Engineer's judgement, the findings of facts and extent of delay justify such an extension. Contractor shall not be entitled to any additional compensation of any kind arising out of or relating to abnormal weather conditions.

**(e) Exclusions from Contract Time** - Regardless of the way Contract Time is expressed in the Contract, certain Calendar Days will not be charged against Contract Time. These exclusions will be allowed when the Contractor is prevented from performing Work due to one of the following reasons, resulting in delay:

- Acts of God or Nature;
- Court orders enjoining prosecution of the Work;
- Strikes, labor disputes or freight embargoes that, despite the Contractor's reasonable efforts to avoid them, cause a shutdown of the entire Project or one or more major operations. "Strike" and "labor dispute" may include union action against the Contractor, a Subcontractor, a Materials supplier, or the Agency; or
- Suspension of the Work by written order of the Engineer for reasons other than the Contractor's failure or neglect.

**(f) Time Calculation Protest** - In the event the Contractor disputes the accuracy of the statement of Contract Time charges, it shall immediately contact the Engineer and attempt to resolve the dispute. If the dispute cannot be resolved informally, the Contractor shall submit a formal written protest to the Engineer within 7 Calendar Days of the date the Engineer mailed or delivered the statement. Failure to submit a formal written protest within the 7 Calendar Day period constitutes the Contractor's approval of the time charges, or adjusted time charges, itemized in the statement.

**(g) End of Contract Time** - When the Engineer determines that the On-Site Work has been completed, except for the items listed below, the Engineer will issue a Second Notification.

The Second Notification will list:

- The date the time charges stopped;
- Final trimming and cleanup tasks (see 00140.90);
- Equipment to be removed from the Project Site;
- Minor corrective work (punch list) to be completed; and
- Submittals, including without limitation all required certifications, bills, forms, warranties, certificate of insurance coverage (00170.70(b)), and other documents, required to be provided to the Engineer before Third Notification will issue.

The Contractor shall complete all tasks listed in the Second Notification in an expeditious manner within the time frame specified for Final Completion.

**00180.60 Notice of Delay** - The Contractor shall notify the Engineer of any delay that will likely prevent completion of the Work or a Pay Item by the date specified in the Project Work schedule. The notice shall be in writing and shall be submitted within 7 Calendar Days of when the Contractor knew or should have known of the delay. The notice shall include, to the extent available, the following:

- The reasons or causes for the delay;
- The estimated duration of the delay and the estimated resulting cumulative delay in Contract completion;
- Except for 00180.50(e) and 00180.65 delays, whether or not the Contractor expects to request an adjustment of Contract Time due to the delay;
- Whether or not the Contractor expects to accelerate due to the delay; and
- Whether or not the Contractor expects to request additional compensation due to the delay. Except for 00180.50(e) and 00180.65 delays, failure to include this information will constitute waiver of the Contractor's right to later make such a request.
- If Contractor is delayed and has stopped Contract Item work for less than 60 minutes, neither additional Contract Time nor additional compensation will be considered.

**00180.65 Right-of-Way and Access Delays** - Right-of-Way and access delays will be taken into consideration in adjusting Contract Time, and in approving additional compensation if the performance of the Work is delayed because of the Agency's failure to make available to the Contractor:

- Necessary Rights-of-Way;
- Agency-owned or Agency-controlled Materials sources that are offered in the Contract for the Contractor's use; or
- Access to, or rights of occupancy of, buildings and other properties the Contractor is required to enter or to disturb according to Contract requirements.

If the duration and time period of an anticipated delay is stated in the Special Provisions, only the delay occurring beyond that duration and time period- will be considered for adjusting Contract Time or providing additional compensation.

#### **00180.70 Suspension of Work:**

**(a) General** - The Engineer has authority to suspend the Work, or part of the Work, for any of the following causes:

- Failure of the Contractor to correct unsafe conditions;
- Failure of the Contractor to carry out any provision of the Contract;



- Failure of the Contractor to carry out orders issued by the Engineer, the Agency, or any regulatory authority;
- Existence of conditions unsuitable to proper or safe performance of the Work; or
- Any reason considered by the Agency to be in the public interest.

When Work has been suspended for any reason, the Contractor shall not resume Work without the Engineer's written authorization.

**(b) Contractor's Responsibilities during and after Suspension** - During periods of suspension of the Work, the Contractor shall continue to be responsible for protecting and repairing the Work according to 00170.80, and for ensuring that a single designated representative responsible for the Project remains available according to 00150.40(b).

When Work is resumed after suspension, unless otherwise specified in the Contract, the Contractor shall perform the following at no additional compensation:

- Replace or repair any Work, Materials, and Equipment to be incorporated into the Work that was lost or damaged because of the temporary use of the Project Site by the public; and
- Remove Materials, Equipment, and temporary construction necessitated by temporary maintenance during the suspension, as directed by the Engineer.

**(c) Compensation and Allowances for Suspension** - Compensation and allowance of additional Contract Time due to suspension of any portion of the Work will be authorized only for Agency-initiated suspensions for reasons other than the Contractor's failure or neglect. (refer to 00180.50(e), 00180.65, and 00195.40)

#### **00180.80 Adjustment of Contract Time:**

**(a) General** - Contract Time established for the Work will be subject to adjustment, either by increase or decrease, for causes beyond the control of the Contractor, according to the terms of this Subsection. After adjustment, the Contract Time will become, and be designated as, the "Adjusted Contract Time". Except as provided in 00180.65 and 00195.40, an adjustment of Contract Time shall be the Contractor's only remedy for any delay arising from causes beyond the control of the Contractor.

**(b) Contractor's Request Not Required** - The Engineer may increase or decrease the Contract Time or the Adjusted Contract Time if Change Orders or Extra Work orders issued actually increase or decrease the amount of time required to perform the Work. The Engineer may also increase Contract Time in the event of Right-of-Way and Access delays (see 00180.65), and those delays due to causes beyond the Contractor's control specified in 00180.50(e). The Engineer will promptly inform the Contractor of adjustments made to Contract Time according to this Subsection, and will include the reasons for adjustment.

If the Agency anticipates delay during performance of the Contract, and specifies its expected duration and time period in the Special Provisions, the Engineer will only consider additional delay beyond the stipulated duration and time period in determining whether to adjust Contract Time.

**(c) Contractor's Request Required** - In the event the Contractor believes that additional Contract Time is due, the Contractor shall submit to the Engineer a timely request for adjustment of Contract Time. The Engineer will not consider untimely requests. The Agency regards as timely only those requests for adjustment of Contract Time that:

- Accompany a proposed revised Project Work schedule submitted according to 00180.41, for comparison with the last revision of the Project Work schedule; or
- Are not otherwise deemed waived and are submitted within 15 Days after the date of Second Notification, if Second Notification has been issued.

The Engineer will not grant an adjustment of Contract Time for events that occurred prior to the date of the last revision of the Project Work schedule. The Engineer will not authorize, nor the Agency pay, acceleration costs incurred by the Contractor prior to its submittal of a request for adjustment of Contract Time to which the acceleration costs relate.

The Contractor's request for adjustment of Contract Time shall be submitted to the Engineer on a form provided by, or in a format acceptable to, the Engineer, and shall include a copy of the written notice required under 00180.60. The request shall include without limitation:

- Consent of the Contractor's Surety if the request totals more than 30 Calendar Days of additional Contract Time;
- Sufficient detail for the Engineer to evaluate the asserted justification for the amount of additional Contract Time requested;
- The cause of each delay for which additional Contract Time is requested, together with supporting analysis and data;
- Reference to the Contract provision allowing Contract Time adjustment for each cause of delay;
- The actual or expected duration of delay resulting from each cause of delay, expressed in Calendar Days; and
- A schedule analysis based on the current approved Project Work schedule for each cause of delay, indicating which activities are involved and their impact on Contract completion.

**(d) Basis for Adjustment of Contract Time** - In the adjustment of Contract Time, the Engineer will consider causes that include, but are not limited to:

- Failure of the Agency to submit the Contract and bond forms to the Contractor for execution within the time stated in 00130.50, or to submit the Notice to Proceed within the time stated in 00130.90;
- Errors, changes, or omissions in the Supplemental Drawings, quantities, or Specifications;
- Performance of Extra Work;
- Failure of the Agency or Entities acting for the Agency to act promptly in carrying out Contract duties and obligations;
- Acts or omissions of the Agency or Entities acting for the Agency that result in unreasonable delay referenced in 00195.40;
- Causes cited in 00180.50(e); and
- Right-of-way and access delays referenced in 00180.65.

The Engineer will not consider requests for adjustment of Contract Time based on any of the following:

- Contentions that insufficient Contract Time was originally specified in the Contract;
- Delays that do not affect the specified or Adjusted Contract Time;
- Delays that affect the Contractor's planned early completion, but that do not affect the specified or adjusted Contract Time;
- Shortage or inadequacy of Materials, Equipment or labor;
- Work stoppage required by the Engineer to determine the extent of Work defects
- Time for the Contractor to correct the Work defects from date of notification of the defects until the correction work is completed and has been approved by the Engineer.
- Late delivery of Materials and Equipment to be incorporated into the Work, except under those conditions referenced in 00180.50(e);
- Different area of Material source in 00160.40(a);
- Substitution of Equipment in 00180.31(c);
- Reasonably predictable weather conditions; or
- Other matters within the Contractor's control or Contract responsibility.

**(e) Consideration and Response by Agency** - The Engineer will only consider a Contractor's request for Contract Time adjustment submitted according to the requirements of 00180.80(c). The Engineer may elect not to consider claimed delays that do not affect the specified or adjusted Contract Time required to complete the Work.

The Engineer may adjust Contract Time for causes not specifically identified by the Contractor in its request.



The Engineer will review a properly submitted request for Contract Time adjustment, and within a reasonable time will advise the Contractor of the Engineer's findings. If the Contractor disagrees with the Engineer's findings, the Contractor may request review according to the procedure specified in 00199.40.

#### **00180.85 Failure to Complete on Time; Liquidated Damages:**

**(a) Time is of the Essence** - Time is of the essence in the Contractor's performance of the Contract. Delays in the Contractor's performance of the Work may inconvenience the traveling public, interfere with business and commerce, and increase cost to the Agency. It is essential and in the public interest that the Contractor prosecute the Work vigorously to Contract completion.

The Agency does not waive any rights under the Contract by permitting the Contractor to continue to perform the Contract, or any part of it, after the Contract Time or adjusted Contract Time has expired.

**(b) Liquidated Damages** - The Agency will sustain damage if the Work is not completed within the specified Contract Time. However, in certain Agency projects it may be unduly burdensome and difficult to demonstrate the exact dollar value of such damages. The Agency will identify such projects in the Special Provisions related to them. In these projects, the Contractor agrees to pay to the Agency, not as a penalty but as liquidated damages, the amount specified in the Special Provisions for each Calendar Day the Contractor expends performing the Contract in excess of the Contract Time or adjusted Contract Time.

Payment by the Contractor of liquidated damages does not release the Contractor from its obligation to fully and timely perform the Contract according to its terms. Nor does acceptance of liquidated damages by the Agency constitute a waiver of the Agency's right to collect any additional damages it may sustain by reason of the Contractor's failure to fully perform the Contract according to its terms. The liquidated damages shall constitute payment in full only of damages incurred by the Agency due to the Contractor's failure to complete the Work on time.

If the Contract is terminated according to 00180.90(a), and if the Work has not been completed by other means on or before the expiration of Contract Time or adjusted Contract Time, liquidated damages will be assessed against the Contractor for the duration of time reasonably required to complete the Work.

#### **00180.90 Termination of Contract and Substituted Performance:**

**(a) Termination for Default** - Termination of the Contract for default may result if the Contractor:

- Fails to comply with the requirements for records;
- Violates any material provision of the Contract;
- Disregards applicable laws and regulations or the Engineer's instructions;
- Refuses or fails to supply enough Materials, Equipment or skilled workers for prosecution of the Work in compliance with the Contract;
- Fails to make prompt payment to Subcontractors;
- Makes an unauthorized general assignment for the benefit of the Contractor's creditors;
- Has a receiver appointed because of the Contractor's insolvency;
- Is adjudged bankrupt and the court consents to the Contract termination; or
- Otherwise fails or refuses to faithfully perform the Contract according to its terms and conditions.

If the Contract is terminated by the Agency, upon demand the Contractor and the Contractor's Surety shall provide the Engineer with immediate and peaceful possession of the Project Site, and of all Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments under 00195.50.

If the Contract is terminated for default, neither the Contractor nor its Surety shall be:

- Relieved of liability for damages or losses suffered by the Agency because of the Contractor's breach of Contract; or

- Entitled to receive any further progress payments until the Work is completed. However, progress payments for completed Work that remain due and owing at the time of Contract termination may be made according to the terms of 00195.50, except that the Engineer will be entitled to withhold sufficient funds to cover costs incurred by the Agency as a result of the termination. Final payment to the Contractor will be made according to the provisions of Section 00195.

If a termination under this provision is determined by a court of competent jurisdiction to be unjustified, the termination shall be deemed a termination for public convenience.

**(b) Substituted Performance** - According to the Agency's procedures, and upon the Engineer's recommendation that sufficient cause exists, the Agency, without prejudice to any of its other rights or remedies and after giving the Contractor and the Contractor's Surety 10 Calendar Days' written notice, may:

- Terminate the Contract;
- Substitute the Contractor with another Entity to complete the Contract;
- Take possession of the Project Site;
- Take possession of Materials on the Project Site;
- Take possession of Materials not on the Project Site, for which the Contractor received progress payments under 00195.50;
- Take possession of Equipment on the Project Site that is to be incorporated into the Work;
- Take possession of Equipment not on the Project Site that is to be incorporated into the Work, and for which the Contractor received progress payments under 00195.50; and
- Finish the Work by whatever method the Agency deems expedient.

If, within the 10 Calendar Day notice period provided above, the Contractor and/or its Surety corrects the basis for declaration of default to the satisfaction of the Engineer, or if the Contractor's Surety submits a proposal for correction that is acceptable to the Engineer, the Contract will not be terminated.

**(c) Termination for Public Convenience** - The Engineer may terminate the Contract for convenience in whole or in part whenever the Engineer determines that termination of the Contract is in the best interest of the public and for, but not limited to, the following reasons:

- If work under the contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of any third party judicial proceeding relating to the Work other than a suit or action filed in regard to a labor dispute; or
- If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Contract; or
- If Agency funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. This Contract may be modified to accommodate a reduction in funds; or
- If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract.

The Engineer will provide the Contractor and the Contractor's Surety 7 Calendar Days' written notice of termination for public convenience. After such notice, the Contractor and the Contractor's Surety shall provide the Agency with immediate and peaceful possession of the Project Site, and of Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments under 00195.50.

Termination under any provision of this paragraph shall not affect any right, obligation, or liability of Contractor or Agency that accrued prior to such termination.

If the Contract is terminated for public convenience, neither the Contractor nor its Surety shall be relieved of liability for damages or losses suffered by the Agency as a result of defective, unacceptable or unauthorized Work completed or performed.



Compensation for Work terminated by the Engineer under this provision will be determined according to the provisions of 00195.70(b).

#### **00180.95 Project Closeout**

(a) **Description of Requirements** – Project Closeout is defined to include general requirements near the end of the Contract Time, in preparation for Substantial Completion, Final Completion, final payment, normal termination of Contract, occupancy by Agency and similar actions evidencing completion of the Work. Specific requirements for individual units of Work are specified in various technical specification sections.

#### **(b) Prerequisites To Substantial Completion**

(1) Prior to requesting Engineer's inspection for certification of Substantial Completion for the entire work, complete the following and list known exceptions in request:

- In progress payment request, coincide with or first following date claimed, show either 100% completion for portion of work claimed as "substantially complete", or list incomplete items, value of incompleteness, and reasons for being incomplete. Include supporting documentation for completion as indicated in these Contract Documents.
- Submit specific warranties, workmanship/maintenance bonds, maintenance agreements, final certifications and similar documents.
- Obtain and submit releases enabling Agency's full and unrestricted use of the Work and access to services and utilities.
- Deliver tools, spare parts, extra stocks of materials, and similar physical items to Agency.
- Where applicable, make final change-over of locks and transmit keys to Agency and advise Agency's personnel of change-over in security provisions.
- Complete start-up testing of systems, and instructions of Agency's operating/maintenance personnel. Discontinue (or change-over) and remove from Project site temporary facilities and services, along with construction tools and facilities, mock-ups, and similar elements.
- Touch-up and otherwise repair and restore marred exposed finishes.

(2) Upon receipt of Contractor's request, Engineer will either proceed with inspection or advise Contractor of prerequisites not fulfilled. Following initial inspection, Engineer will either prepare Certificate of Substantial Completion, or advise Contractor of Work which must be performed prior to issuance of certificate; a repeat inspection will be performed when requested and assured by the Contractor that Work has been substantially completed. Results of completed inspection will form initial "punch-list" requirements for Final Completion. If more than two visits are required to complete the final inspection for Substantial Completion then the Contractor shall pay the Agency for the Engineer's time, for all categories of labor required to complete the inspection for Substantial Completion at the Engineer's standard billing rates at the time of inspection. This time shall include time for travel and time to prepare inspection reports. Contractor shall also pay the Engineer's expenses at cost plus 10% and \$0.55 per mile for travel to and from the site.

#### **(c) Prerequisites To Final Completion**

(1) Prior to requesting Engineer's final inspection for final payment and acceptance, complete the following and list known exceptions (if any) in request:

- Submit final payment request with final releases and supporting documentation which have not previously been submitted and accepted. Include certificates of insurance for products and completed operations where required.
  - Submit updated final statement, accounting for additional (final) changes to Contract Amount.
  - Submit certified copy of Engineer's final punch-list of itemized work to be completed or corrected, stating that each item has been completed or otherwise resolved for acceptance, endorsed and dated by Engineer.
  - Submit final meter readings for utilities, measured record of stored fuel, and similar data as of time of Substantial Completion or when Agency took possession of and responsibility for corresponding elements of the work.
  - Submit consent of surety.
  - Submit final liquidated damages settlement statement, acceptable to Agency.
  - Submit record drawings, maintenance manuals, and similar final record information.
- (2) Re-inspection Procedure: Upon receipt of Contractor's notice that the Work has been completed, including punch-list items resulting from earlier inspections, and accepting incomplete items delayed because of acceptable circumstances, Engineer will re-inspect the work. Upon completion of re-inspection, Engineer will either make recommendation for final payment and acceptance by the Agency or advise Contractor of work not completed or obligations not fulfilled as required for final payment. If necessary, procedure will be repeated. If more than two visits are required to complete the final inspection for final payment then the Contractor shall pay the Agency for the Engineer's time, for all categories of labor required to complete the inspection for final acceptance at the Engineer's standard billing rates at the time of inspection. This time shall include time to travel and time to prepare inspection reports. Contractor shall also pay the Engineer's expenses at cost plus 10% and \$0.55 per mile for travel to and from the site.

**(d) Closeout Documents**

- (1) Submit following Closeout Submittals after receipt of Second Notification and at least seven (7) days prior to Application for Final Payment:
- Evidence of Compliance with Requirements of Governing Authorities.
  - Project Record Documents.
  - Operation and Maintenance Manuals.
  - Warranties and Bonds.
  - Keys and Keying Schedule.
  - Evidence of Payment and Release of Liens as outlined in Conditions of the Contract.
  - Certificate of Compliance



## Section 00190 - Measurement of Pay Quantities

**00190.00 Scope** - The Engineer will measure pay quantities for accepted Work according to the United States standard measure unless otherwise provided in the Contract. Unless otherwise specified in the Contract, the Engineer will round off all quantity computations using the following convention:

- The final significant digit will not be changed when the succeeding digit is less than 5.
- The final significant digit will be increased by one when the succeeding digit is 5 or greater.

The measurement provisions contained in the Specifications for each Pay Item will supplement or modify the above convention by:

- Imposing measurement limitations
- Describing measurement or computation procedures
- Giving conversion factors or adjustment conditions
- Providing for determination of reasonably accurate and representative Pay Item quantities

Measurements required or allowed to be made by the Contractor will be subject to the Engineer's verification. The Engineer's decision about measurement is final.

**00190.10 Measurement Guidelines** - Measurement of quantities will be made on the following bases, unless otherwise specified in the Contract:

**(a) Unit Basis** - Unit will be each, unless otherwise specified in the Contract and will be determined by actual count of units in place.

**(b) Length Basis** - Length will be feet or mile, unless otherwise specified in the Contract and will be determined by measuring the length at least to the nearest 0.1 foot or at least to the nearest 0.1 mile, as applicable, unless otherwise specified in the Contract. Measurements will be limited to the dimensions shown or specified, or as directed by the Engineer.

**(c) Area Basis** - Area will be square foot, square yard, or acre, unless otherwise specified in the Contract and will be determined by measuring the width and the length (or height) at least to the nearest 0.1 foot and computed at least to the nearest 0.1 square foot, nearest 0.1 square yard, or nearest 0.1 acre, as applicable, unless otherwise specified in the Contract.

**(d) Weight Basis** - Weight will be pound or ton, unless otherwise specified in the Contract and will be determined as follows:

**(1) Pound** - Pound weight will be determined by the net weight identified on the manufacturer's packaged labels, subject to periodic check weighing. Weight by pound will be measured at least to the nearest 1.0 pound unless otherwise specified in the Contract.

Provide a certificate with each shipment together with a certified copy of the weight of each delivery. If the check weight is less than the manufacturer weight by more than 0.4%, the discrepancy will be resolved by the Engineer.

**(2) Ton** - Ton weight will be determined on Contractor-provided scales as required under 00190.20 unless otherwise allowed by the Specifications. Weight by ton will be measured at least to the nearest 0.01 ton unless otherwise specified in the Contract.

If bituminous materials, portland cement, lime, and similar bulk Materials are shipped by truck or rail, the supplier's shipping invoice with net scale weights, or volumes converted to weights, may be used for Pay Item quantity determination in place of weights determined on the Contractor-provided vehicle scales.

Shipping invoice weights of the supplier's truck or transport shall be subject to periodic check weighing on the Contractor's vehicle scales, or other scales designated, according to 00190.20. If the check weight is less than the supplier weight by more than 0.4%, the discrepancy will be resolved by the Engineer.

No payment will be made:

- For quantities in excess of the supplier weight
- When Materials have been lost, wasted, or otherwise not incorporated into the Work
- For additional hauling costs resulting from the check weighing

**(e) Volume Basis** - Volume will be cubic yard truck measure or in-place measure, gallons, foot board measure (FBM), or thousand foot board measure (MFBM), unless otherwise specified in the Contract and will be measured at least to the nearest 0.1 cubic yard, nearest 1.0 gallon, nearest 0.1 FBM, or nearest 0.1 MFBM, as applicable, unless otherwise specified in the Contract.

Truck measure will be the measured and calculated maximum "water level" capacity of the vehicle. Quantities will be determined at the point of delivery, with no allowance for settlement of Material during transit. When required to facilitate measurement, the vehicle load shall be leveled at the point of delivery. Payment will not be made for Material in excess of the maximum "water level" capacity. Deductions will be made for loads below the maximum "water level" capacity.

When bituminous materials are measured by volume, the volume will be measured at 60 °F or will be corrected to the volume at 60 °F using the correction factors found in the MFTP (ODOT TM 321).

**(f) Time Basis** - Time will be hour, Day, or year, unless otherwise specified in the Contract, and will be measured to at least the nearest 0.5 hour, nearest 1.0 Day, or nearest 1.0 year, as applicable, unless otherwise specified in the Contract.

**(g) Standard Manufactured Items** - If standard manufactured items, such as fence, wire, plates, rolled shapes, pipe, conduit and other similar items are specified in the Contract by properties such as gauge, unit weight, or section dimensions, the manufacturing tolerances established by the industry involved will be accepted unless more stringent tolerances are cited in the Contract.

**(h) Lump Sum Basis** - Lump sum, when used, means the Work described shall be completed and accepted without measurement unless changes are ordered in writing by the Engineer.

#### **00190.20 Contractor to Provide Vehicle Weigh Scales:**

**(a) General** - If the Specifications require measurement by weighing on vehicle weigh scales, the Contractor shall provide vehicle weigh scales and shall transport Materials to the scales. Subject to the Engineer's approval, weights may be determined by plant or hopper scales according to 00190.30.

Contractor-provided scales shall be furnished, installed and maintained by the Contractor or its supplier, or, subject to the Engineer's approval, may be commercial scales located in the vicinity of the Project.

Unless otherwise provided in the Contract, Pay Items to be measured by weight shall include all Contractor costs for providing, maintaining, inspecting, and testing scales; for furnishing appropriate weigh tickets; for self-printing scales; and for transporting Materials to the scales or to check weighing.

**(b) Requirements** - The scales shall conform to ORS 618, or the laws of the state in which they are located, and NIST Handbook 44, and shall be:

- Licensed by the Oregon Department of Agriculture, or by the analogous regulatory body for scales located outside the State;
- Technically suitable for weighing the Materials;
- Properly installed and maintained; and
- Accurate to the required tolerances.

The weight of any Materials weighed by anyone other than the Engineer will be subject to check weighing as the Engineer directs.

**(c) Approaches** - Vehicle scale approaches shall be:



- At each end of the scale platform;
- Straight and in line with the platform; and
- Long enough to accommodate combination vehicles longer than the scale platform so that they are level and allow release of brakes before weighing.

**(d) Inspections** - Contractor shall have all scales certified, that is inspected and their accuracy tested, by the Oregon Department of Agriculture, an analogous regulatory body for scales located outside the State, or a scale service company as follows:

- Before use if installed at a new site;
- 60 Calendar Days after initial inspection;
- Every 6 months thereafter; and
- When the Engineer directs additional inspections.

No Materials weighed on scales without current certifications according to this Subsection will be accepted. The Contractor shall provide a copy of all required certifications to the Engineer.

Testing by a scale service company within the State of Oregon shall comply with ORS 618.

If additional inspections directed by the Engineer confirm that the scale accuracy is within the required tolerances, the Agency will pay the cost for inspecting and testing the scales. If the scale accuracy is not within these tolerances, the Contractor shall pay the cost for inspecting and testing the scales.

**(e) Inspection Results** - If an inspection indicates the scales have been under-weighing (indicating less than the true weight), the Agency will make no additional payment to the Contractor for Materials previously weighed.

If an inspection indicates the scales have been over-weighing (indicating more than the true weight), the weights will be reduced for Materials received after the time the Engineer determines the overweighing began or, if that is not possible, after the last acceptable certification of the scales. The reduction will be the amount of error in excess of the 0.2% maintenance tolerance allowed in the Contract.

**(f) Contractor-Provided Weigh Technician** - The Contractor shall provide a technician to operate Contractor-provided vehicle weigh scales. The Agency may observe procedures and require check weighing according to the following:

**(1) Scale with Automatic Printer** - If the scales have an automatic weigh memo printer that does not require manual entry of gross weight information, the Agency may periodically have a representative at the scales to observe the weighing procedures. In addition, the Engineer may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified according to 00190.20(b) and 00190.20(d).

If a different scale is not available within a 30 mile round trip from the regular haul route the Agency will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Contractor-provided weight are acceptable.

The Engineer will resolve discrepancies found by check weighing. Agency employee costs will be paid by the Agency. The Contractor shall pay all other costs resulting from the check weighings, including without limitation the use of other scales.

If more than 50 tons per Day of all types of Materials are received from a scale, the Contractor shall make random check weighings at least every tenth Day on which more than 50 tons is received or at each interval that 10,000 tons has been weighed, whichever occurs first, or as directed by the Engineer. The Contractor shall make at least one check weighing on projects where more than 2,000 tons of all types of Materials are received from a scale. The Contractor shall provide the Engineer with the results of the check weighing.

**(2) Scale Without Automatic Printer** - If the scales require manual entry of gross weight information, the Agency may periodically have a representative weigh witness at the scales to observe the weighing procedures. The Contractor shall inform the Engineer of his intent to use a scale without an automatic printer at least 3 working Days before weighing begins or before the Contractor changes to a scale that does not have an

automatic printer. The Contractor shall pay costs for the weigh witness. The hourly cost of the weigh witness will be as stated in the Special Provisions. In addition, the Engineer may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified according to 00190.20(b) and 00190.20(d).

If a different scale is not available within a 30 mile round trip from the regular haul route the Agency will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Contractor-provided weight are acceptable.

The Engineer will resolve discrepancies found by check weighing. Agency employee costs for check weighings will be paid by the Agency. The Contractor shall pay all other costs resulting from the check weighings, including without limitation the use of other scales.

If more than 50 tons per Day of all types of Materials are received from a scale, the Contractor shall make random check weighings at least every tenth day on which more than 50 tons is received or at each interval that 10,000 tons has been weighed, whichever occurs first, or as directed by the Engineer. The Contractor shall make at least one check weighing on all projects where materials are received from a scale without an automatic printer. The Contractor shall provide the Engineer with the results of the check weighing.

**(3) Duties of Weigh Technician** - The Contractor's weigh technician shall:

- Determine twice a Day, or as otherwise directed by the Engineer, the empty haul weights (tare weights) of hauling vehicles, unless vehicles are tared before each load;
- Furnish daily a listing of the tare weights if 10 or more loads are hauled during that Day;
- Furnish a note listing the net weight for each consecutive ten loads with the following load;
- Furnish a daily listing of the net weights and total weight for each type of Material hauled during that Day; and
- Furnish a legible, serially numbered weigh memo for each load of Materials to the Agency's Materials receiver at the point of delivery, or as directed by the Engineer. The memo shall identify the Project, the Materials, the date, net weight (gross and tare as appropriate), and identification of vehicle, driver and weigh technician.

**(g) Agency-Provided Weigh Technician** - If the Contractor provides vehicle weigh scales without a weigh technician meeting the requirements of this Subsection, the Agency will provide a weigh technician at the Contractor's expense. The Contractor shall provide a weighhouse for the weigh technician according to Section 00205. The Agency's weigh technician will:

- Determine tare weights;
- Prepare weigh memos for each load;
- Compile the weigh records; and
- Not participate in the production of Materials or the loading of haul vehicles.

**00190.30 Plant Scales** - The Contractor, with the Engineer's written approval, may weigh plant-mixed Materials on scales that have either:

- An automatic weight batching and mixing control printer system; or
- A weigh hopper printer system.

Any additional costs resulting from the use of these scales shall be borne by the Contractor. Check weighing will be done according to 00190.20(f).

Except for 00190.20(c) regarding approaches, the Contractor's use of plant scales shall comply with all provisions of 00190.20.

The Engineer's approval for the Contractor's use of plant scales to determine pay weights will be rescinded if check weighing or scale inspections indicate the scales do not consistently determine weights within the tolerances allowed by state law.



## Section 00195 - Payment

### 00195.00 Scope and Limit:

(a) **General** - The Agency will pay only for measured Pay Item quantities incorporated into the Work or performed according to the terms of the Contract. The Contractor understands and agrees that Pay Item quantities listed in the Schedule of Items do not govern payment.

Payment constitutes full compensation to the Contractor for furnishing all Materials, Equipment, labor, and Incidentals necessary to complete the Work; and for risk, loss, damage, and expense arising from the nature or prosecution of the Work or from the action of the elements, subject to the provisions of 00170.80. The Contractor shall include the costs of bonds and insurance for the Project in the unit price for each Pay Item of Work to be performed.

(b) **Essential or Incidental Materials or Work** - When the Specifications state that the unit price for a Pay Item is compensation for certain Materials or Work essential or Incidental to the Pay Item, the same Materials or Work will not be measured or paid under any other Pay Item.

**00195.10 Payment For Changes in Materials Costs** - On certain projects, as identified in the Special Provisions, an escalation/de-escalation clause with respect to certain materials will be in effect during the life of the Contract.

**00195.13 Asphalt Cement Material Price Escalation/De-Escalation Clause** - Subsections 00195.13, 00195.13(a), 00195.13(b), 00195.13(c), and 00195.13(d) contain the price escalation/de-escalation clause relating to asphalt cement materials (as defined in 00195.13(d)).

(a) **Monthly Asphalt Cement Material Price (MACMP)** - The Monthly Asphalt Cement Material Price (MACMP) will be established by the Agency each month and will be based on the published prices of PG 64-22 asphalt cement furnished by Poten & Partners, Inc. The MACMP will be based on the average prices for the Pacific Northwest, Portland Oregon area. Each MACMP for a given month will be the average of the published prices of that MACMP for each Friday in that month. For information regarding the calculation of the MACMP, and for the actual MACMP, go to the ODOT website at:

[http://www.oregon.gov/ODOT/HWY/ESTIMATING/asphalt\\_fuel.shtml](http://www.oregon.gov/ODOT/HWY/ESTIMATING/asphalt_fuel.shtml)

If the ODOT selected index ceases to be available for any reason, the Agency in its discretion will select and begin using a substitute price source or index to establish the MACMP each month. The MACMP will apply to all asphalt cement including but not limited to paving grade, polymer modified, and emulsified asphalts, and recycling agents. The Agency does not guarantee that asphalt cement will be available at the MACMP

(b) **Base Asphalt Cement Material Price (Base)** - The Base price for this Project is the MACMP published on the ODOT website for the month immediately preceding the bid opening date.

(c) **Monthly Asphalt Cement Adjustment Factor** - The Monthly Asphalt Cement Adjustment Factor will be determined each month as follows:

- If the MACMP is within  $\pm 5\%$  of the Base, there will be no adjustment.
- If the MACMP is more than 105% of the Base, then:

$$\text{Adjustment Factor} = (\text{MACMP}) - (1.05 \times \text{Base})$$

- If the MACMP is less than 95% of the Base, then:

$$\text{Adjustment Factor} = (\text{MACMP}) - (0.95 \times \text{Base})$$

(d) **Asphalt Cement Price Adjustment** - If specified in the Special Provisions, an asphalt cement escalation/de-escalation clause will be in effect during the life of the Contract. A price adjustment will be made for each pay item in the bid schedule containing asphalt cement. The price adjustment as calculated in 00195.13(c)

above will use the MACMP for the month the asphalt is incorporated into the Project. The Agency reserves all of its rights under the Contract, including, but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this escalation/de-escalation provision shall not limit those rights.

#### **00195.20 Changes to Plans or Character of Work:**

**(a) Insignificant Changed Work** - If the changes made under 00140.30 do not significantly change the character, quantity or unit cost of the Work to be performed under the Contract, the Agency will pay for such work at the Pay Item price.

**(b) Significant Changed Work** - If the changes made under 00140.30 significantly alter the character, quantity, unit cost, or lump sum cost of the Work, the Agency will adjust the Contract. The Contractor shall not be entitled to compensation for any loss in profits resulting from elimination of, reduction of, or other change to, a part of the Work.

Any such adjustments may be less than, but will not be more than the amount justified by the Engineer on the basis of the established procedures set out in Section 00197 for determining rates for Extra Work, but those procedures shall account for the decrease or elimination of Work as well as for increases in the Work. This does not limit the application of Section 00199.

The term "Significant Changed Work" shall apply only to that circumstance in which the character of the Work, as changed, differs materially in kind, nature, or unit cost from that involved or included in the originally proposed construction.

For purposes of this Section, "Significant" is defined as:

- a) An increase or decrease of more than 25 percent of the total cost of the Work calculated from the original proposal quantities and the unit contract prices; or,
- b) An increase or decrease of more than 25 percent in the quantity of any one major contract item.

For condition b) above, a major item is defined as any item that amounts to 10 percent or more of the original total contract price.

**00195.30 Differing Site Conditions** - Upon written notification, as required in 00140.40, the Engineer will investigate the identified conditions. If the Engineer determines that the conditions are differing Project Site conditions under 00140.40 and cause an increase or decrease in the cost or time required to perform any Work under the Contract, an adjustment in the Contract Amount or Contract Time, excluding loss of anticipated profits, will be made, and the Contract modified accordingly, in writing. The Engineer will notify the Contractor as to whether or not an adjustment of the Contract is warranted.

No Contract adjustment which benefits the Contractor will be allowed unless the Contractor has provided the required written notice. Any such adjustments will be made according to 00195.20.

**00195.40 Unreasonable Delay by the Agency** - If the Contractor believes that performance of all or any portion of the Work is suspended, delayed, or interrupted for an unreasonable period of time in excess of that originally anticipated or customary in the construction industry, due to acts or omissions of the Agency, or persons acting for the Agency, and that additional compensation, Contract Time, or both, are due the Contractor because of the suspension, delay or interruption, the Contractor shall immediately file a written notice of delay according to 00180.60. The Contractor shall then promptly submit a properly supported request for any additional compensation, Contract Time, or both, according to the applicable provisions in 00180.60 through 00180.80 and Section 00199.

The Engineer will promptly evaluate a properly submitted request for additional compensation. If the Engineer determines that the delay was unreasonable, and that the cost required for the Contractor to perform the Contract has increased as a result of the unreasonable suspension, delay or interruption, the Engineer will make an equitable adjustment, excluding profit, and modify the Contract in writing accordingly. The Engineer will notify the Contractor of the determination and whether an adjustment to the Contract is warranted.

Under this provision, no Contract adjustment will be allowed:



- Unless the Contractor has provided the written notice required by 00180.60;
- For costs incurred more than 10 Calendar Days before the Engineer receives the Contractor's properly submitted written request;
- For any portion of a delay that the Engineer deems to be a reasonable delay, or for which an adjustment is provided for or excluded under other terms of the Contract; or
- To the extent that performance would nevertheless have been suspended, delayed or interrupted by causes other than those described in this Subsection.

#### **00195.50 Progress Payments and Retained Amounts:**

- (a) **Progress Payments** - The Agency's payment of progress payments, or determination of satisfactory completion of Pay Items or Work or release of retainage under 00195.50(d), shall not be construed as Final Acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective Materials or workmanship or for latent defects and warranty obligations.

The estimates upon which progress payments are based are not represented to be accurate estimates. All estimated quantities are subject to correction in the final estimate. If the Contractor uses these estimates as a basis for making payments to Subcontractors, the Contractor assumes all risk and bears any losses that result.

Progress payments shall be determined through the use of forms developed by the Engineer.

- (1) **Progress Estimates** - At the same time each month, the Engineer will make an estimate of the amount and value of Pay Item Work completed. The amount of Work completed will be the sum of the estimated number of units completed for unit price Pay Items plus the estimated percentage completed of lump sum Pay Items.

The estimated value of the Work completed will then be determined by using the Contract unit price for unit price Pay Items, and by using one of the following methods to determine the value of the lump sum Pay Items:

- A Contractor-submitted, Engineer-approved Schedule of Values; or
- Engineer's determination, when there is no approved, Contractor-submitted Schedule of Values.

The amounts to be allowed for lump sum Pay Items in progress payments will not exceed the reasonable value of the Work performed, as determined by the Engineer.

Incidentals such as formwork, falsework, shoring, and cribbing shall be included in the unit prices for the various Pay Items requiring their use, unless specified as a separate Pay Item. No payment will be made for Pay Items that include Incidentals until units or portions of such Pay Item Work are in place and completed. The costs of Incidentals will be paid in proportion to the percentage of Pay Item Work completed.

- (2) **Value of Materials on Hand** - The Engineer will also make an estimate of the amount and value of acceptable Materials on hand, i.e., already delivered and stored according to 00195.60(a), to be incorporated into the Work.

- (3) **Value of Work Completed** - The sum of the values in (1) and (2) above will be collectively referred to in this Subsection as the "value of Work completed", subject to (4) below.

- (4) **Limitations on Value of Work Accomplished** - In determining the "value of Work accomplished", the Engineer's estimate will be based on the unit prices for the various Pay Items. Any amounts not included in progress payments due to substantial mathematical unbalancing of Pay Item prices will be included in the final payment issued according to 00195.90(b).

- (5) **Reductions to Progress Payments** - With each progress payment, the Contractor will receive a Contract payment voucher and summary setting forth the value of Work accomplished reduced by the following:

- Amounts previously paid;
- Amounts deductible or owed to the Agency for any cause specified in the Contract;



- Additional amounts retained to protect the Agency's interests according to Subsection (e) below.

**(b) Retainage** - The amount to be retained from progress payments will be 5% of the value of Work accomplished, and will be retained in one of the forms specified in Subsection (c) below.

As provided in 00170.65(a) additional retainage of 25% of amounts earned will be withheld and released according to ORS 279C.845 when the Contractor fails to file the certified statements required in ORS 279C.845, FHWA Form 1273, and 00170.65.

**(c) Forms of Retainage** - Moneys retained by the Agency under ORS 279C.570(7) shall be retained in a fund by the Agency and paid to the Contractor in accordance with ORS 279C.570. Upon written request from the Contractor, other forms of acceptable retainage are specified below in Subsections (1) and (2). "Cash, Alternate A" is the Agency-preferred form of retainage. If the Agency incurs additional costs as a result of the Contractor's election to use a form of retainage other than Cash, Alternate A, the Agency may recover such costs from the Contractor by a reduction of the final payment.

**(1) Cash, Alternate A** - Retainage will be deducted from progress payments and held by the Agency until final payment is made according to 00195.90, unless otherwise specified in the Contract.

The Agency will deposit the cash retainage withheld in an interest-bearing account in a bank, trust company, or savings association for the benefit of the Agency, as provided by ORS 279C.560(5). Interest earned on the account shall accrue to the Contractor. Amounts retained and interest earned will be included in the final payment made according to 00195.90.

Any retainage withheld on Work performed by a Subcontractor will be released to the Contractor according to 00195.50(d).

**2) Bonds, Securities, and Other Instruments** - In accordance with ORS 279C.560, unless the Agency finds in writing that accepting a bond, security or other instrument poses an extraordinary risk that is not typically associated with the bond, security or other instrument, the Agency will approve the Contractor's written request to deposit bonds, securities or other instruments with the Agency or in a custodial account or other account satisfactory to the Agency with an approved bank or trust company, to be held instead of cash retainage for the benefit of the Agency. In such event, the Agency will reduce the cash retainage by an amount equal to the value of the bonds, securities and other instruments. Interest or earnings on the bonds, securities and other instruments shall accrue to the Contractor.

Bonds, securities and other instruments deposited instead of cash retainage shall be assigned to or made payable to the Agency and shall be of a kind approved by the Director of the Oregon Department of Administrative Services, including but not limited to:

- Bills, certificates, notes or bonds of the United States;
- Other obligations of the United States or agencies of the United States;
- Obligations of a corporation wholly owned by the federal government;
- Indebtedness of the Federal National Mortgage Association;
- General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon;
- Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Agency may require to protect its interests. When the Engineer determines that all requirements for the protection of the Agency's interest have been fulfilled, the bonds and securities deposited instead of cash retainage will be released to the Contractor.

**(d) Reduction of Retainage** - As the Work progresses, the amounts to be retained under (b) of this Subsection are subject to reduction in the Engineer's sole discretion. Retainage reductions will be considered only as follows:

- When the Work is 97.5% or more completed, the Engineer may, without application by the Contractor, reduce the retained amount to 100% of the value of the Work remaining.
- For a project funded by the FHWA, when a subcontractor has satisfactorily completed all of its Work, it may request release of retainage for that Work from the Contractor. The Contractor shall request reduction of



retainage in the amount withheld for the subcontractor's Work after certifying to the Agency that the subcontractor's Work is complete, and that all contractual requirements pertaining to the subcontractor's Work have been satisfied. Within 60 Calendar Days of the end of the month in which the Agency receives the Contractor's certification regarding the subcontractor's Work, the Agency will either notify the Contractor of any deficiencies which require completion before release of retainage, or verify that the subcontractor's Work complies with the Contract and release all retainage for that Work with the next scheduled progress payment. Within 10 Calendar Days of receipt of retainage, the Contractor shall pay to the subcontractor all such retainage released except for latent defects or warranty.

- The Agency will only release retainage for satisfactorily completed portions of the Work represented by Pay Items in the Schedule of Items, or by Pay Items added by Change Order. Work not represented by a Pay Item, but which constitutes part of an uncompleted Pay Item, will not be regarded as satisfactorily completed Work for the purposes of this Subsection.

If retainage has been reduced or eliminated, the Agency reserves the right to protect its interests by retaining amounts from further progress payments at the rates provided in 00195.50(b).

**(e) Withholding Payments** - In addition to any other rights the Agency may have to withhold payments under other provisions of the Contract, the Engineer may withhold such amounts from progress payments or final payment as may reasonably protect the Agency's interests until the Contractor has:

- Completed all Final Trimming and Cleanup according to 00140.90 and Punch List work according to 00150.90(a). An amount of up to twice the Engineer's estimated value of Final Trimming and Cleaning and Punch List work may be withheld.
- Complied with all orders issued by the Engineer according to the Specifications; and
- Satisfied all legal actions filed against the Agency, the Agency's governing body and its members, and Agency employees that the Contractor is obliged to defend. (see 00170.72)

Notwithstanding ORS 279C.555 or ORS 279C.570 or 00195.50(d), if a Contractor is required to file statements on the prevailing rate of wages, but fails to do so, the Agency will retain 25% of any amount earned as required in 00170.65.

**(f) Prompt Payment Policy** - Payments shall be made promptly according to ORS 279C.570.

#### **00195.60 Advance Allowance for Materials on Hand:**

**(a) General** - If the total value of Materials on hand is at least \$1,000 or the total value of a single class of Materials on hand is at least \$500, the Engineer may authorize an advance allowance for the Materials in the progress payments. The Agency will not make advance allowances on the Materials unless the following three conditions are satisfied:

**(1) Request for Advance Allowance** - If Materials on hand meet the requirement of (2) below, an advance allowance will be made if:

- A written request for advance allowance for Materials on hand has been received by the Engineer at least 5 Calendar Days before the pay period cutoff date; and
- The request is accompanied by written consent of the Contractor's Surety, if required by the Agency.

**(2) Stored or Stockpiled Conditions** - The Materials shall have been delivered and/or acceptably stored or stockpiled according to the Specifications and as follows:

- At the Project Site;
- On Agency-owned property;
- On property in the State of Oregon on which the property owner has authorized storage in writing. The written authorization must allow the Agency to enter upon the property and remove Materials for at least 6 months after completion of the Project. The Contractor shall furnish a copy of the written permission to the Agency; or
- On property outside the State of Oregon on which the property owner has authorized storage in writing, provided that such storage location is allowed by the Special Provisions or authorized in writing by the

Engineer. The permit must allow the Agency to enter upon the property and remove Materials for at least 6 months after completion of the Project. The Contractor shall furnish a copy of the written permission to the Agency.

To be eligible for advance allowance, the Materials shall:

- Meet Specification requirements;
- Have the required Materials conformance and quality compliance documents on file with the Engineer (see Section 00165);
- Be in a form ready for incorporation into the Work; and
- Be clearly marked and identified as being specifically fabricated, or produced, and reserved for use on the Project.

**(3) Responsibility for Protection** - The Contractor has full control and responsibility for the protection of Materials on hand from the elements and against damage, loss, theft, or other impairment until the entire Project has been completed and accepted by the Agency.

If Materials are damaged, lost, stolen, or otherwise impaired while stored, the monetary value advanced for them, if any, will be deducted from the next progress payment.

If these conditions in 00195.60(a-1) through 00195.60(a-3) have been satisfied, the amount of advance allowance, less the retainage described in 00195.50, will be determined by one of the following methods as elected by the Engineer:

- Net cost to the Contractor of the Materials, f.o.b. the Project Site or other approved site; or
- Price (or portion of it attributable to the Materials), less the cost of incorporating the Materials into the Project, as estimated by the Engineer.

**(b) Proof of Payment** - The Contractor shall provide the Engineer with proof of payment to the Materials suppliers for purchased Materials within 30 Calendar Days of the date of the progress payment that includes the advance allowance.

If proof of payment is not provided, sums advanced will be deducted from future progress payments, and the Engineer will not approve further prepayment advance allowance requests.

**(c) Terminated Contract** - If the Contract is terminated, the Contractor shall provide the Agency immediate possession of all Materials for which advance allowances have been received, as provided above. If, for any reason, immediate possession of the Materials cannot be provided, the Contractor shall immediately refund to the Agency the total amount advanced for the Materials. The Agency may deduct any amount not so refunded from final payment.

**00195.70 Payment under Terminated Contract** - Payment for Work performed under a Contract that is terminated according to the provisions of 00180.90 will be determined under (a) or (b) of this Subsection.

**(a) Termination for Default** - Upon termination of the Contract for the Contractor's default, the Agency will make no further payment until the Project has been completed. The Agency will make progress payments to the party to whom the Contract is assigned, but may withhold an amount sufficient to cover anticipated Agency costs, as determined by the Engineer, to complete the Project.

Upon completion of the Project, the Engineer will determine the total amount that the defaulting Contractor would have been entitled to receive for the Work, under the terms of the Contract, had the Contractor completed the Work (the "cost of the Work").

If the cost of the Work, less the sum of all amounts previously paid to the Contractor, exceeds the expense incurred by the Agency in completing the Work, including without limitation expense for additional managerial and administrative services, the Agency will pay the excess to the Contractor, subject to the consent of the Contractor's Surety.



If the expense incurred by the Agency in completing the Work exceeds the Contract Amount, the Contractor or the Contractor's Surety shall pay to the Agency the amount of the excess expense.

The Engineer will determine the expense incurred by the Agency and the total amount of Agency damage resulting from the Contractor's default. That determination will be final as provided in 00150.00.

If a termination for default is determined by a court of competent jurisdiction to be unjustified, it shall be deemed a termination for public convenience, and payment to the Contractor will be made as provided in Subsection (b) below.

**(b) Termination for Public Convenience:**

**(1) General** - Full or partial termination of the Contract shall not relieve the Contractor of responsibility for completed or performed Work, or relieve the Contractor's Surety of the obligation for any just claims arising from the completed or performed Work.

**(2) Mobilization** - If mobilization is not a separate Pay Item, and payment is not otherwise provided for under the Contract, the Agency may pay the Contractor for mobilization expenses, including moving Equipment to and from the Project Site. If allowed, payment of mobilization expenses will be based on cost documentation submitted by the Contractor to the Engineer.

**(3) All Other Work** - The Agency shall pay the Contractor at the unit price for the number of Pay Item units of completed, accepted Work. For units of Pay Items partially completed, payment will be as mutually agreed, or, if not agreed, as the Engineer determines to be fair and equitable. No claim for loss of anticipated profits will be allowed. The Agency will purchase Materials left on hand according to 00195.80.

**00195.80 Allowance for Materials Left on Hand:**

**(a) Purchase of Unused Materials** - If Materials are delivered to the Project Site, or otherwise acceptably stored at the order of the Engineer, but not incorporated into the Work due to complete or partial elimination of Pay Items, changes in Plans, or termination of the Contract for public convenience according to 00180.90, and it is not commercially feasible for the Contractor to return them for credit or otherwise dispose of them on the open market; the Agency will purchase them according to the formula and conditions specified in Subsection (b) below.

**(b) Purchase Formula and Conditions:**

**(1) Formula** - The Agency will apply the following formula in determining the Contractor's allowance for Materials left on hand:

Contractor's Actual Cost, plus 5% Overhead Allowance, minus Advance Allowances under 00195.60, but no markup or profit.

**(2) Conditions** - The Agency will not purchase the Contractor's Materials left on hand unless the Contractor satisfies the following conditions:

Requests the Agency's purchase of unused Materials;

Shows acquisition of the Materials according to 00160.10;

Shows that the Materials meet Specifications;

Provides receipts, bills and other records of actual cost of Materials delivered to the designated delivery points; and

Demonstrates to the satisfaction of the Engineer that the materials cannot be returned for credit or otherwise disposed of on the open market.

**00195.90 Final Payment:**

**(a) Final Estimate** - As soon as practicable after Final Inspection of the Project, as provided in 00150.90, the Engineer will prepare a final estimate of the quantities of the Pay Items completed. With this estimate of quantities as a base, the total amount due the Contractor will be determined according to the terms of the Contract including without limitation any amounts due for Extra Work performed.

**(b) Final Payment** - The amount of final payment will be the difference between the total amount due the Contractor and the sum of all payments previously made. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

After computation of the final amount due, and after the Engineer's issuance of Third Notification, final payment will be mailed to the Contractor's last known address as shown in the records of the Agency.

**(c) No Waiver of Right to Make Adjustment** - The fact that the Agency has made any measurement, estimate, determination or certification either before or after completion of the Project, Final Acceptance, Agency assumption of possession of the Project Site, determination of satisfactory completion of Pay Items or Work or release of retainage under 00195.50(d) or payment for any part of the Work, shall not prevent either party from:

- Showing the true amount and character of the Work;
- Showing that any measurement, estimate, determination or certification is incorrect;
- Recovering from the other party damages that may have been suffered because the other party failed to comply with the Contract.

**(d) Evidence of Contractor Payments** - As a condition of Final Payment, the Engineer may require the Contractor to submit evidence, satisfactory to the Engineer, that all payrolls, material bills, and other indebtedness connected with the project have been paid, except that in case of any disputed indebtedness or liens, the Contractor may submit in lieu of evidence of payment, a surety bond satisfactory to the Agency guaranteeing payment of all such disputed amounts when adjudicated in cases where such payment has not already been guaranteed by surety bond.

#### **00195.95 Error in Final Quantities and Amounts:**

**(a) Request for Correction of Compensation** - If the Contractor believes the quantities and amounts detailed in the final Contract payment voucher, prepared by the Engineer according to 00195.90, to be incorrect, the Contractor shall submit an itemized statement to the Engineer detailing all proposed corrections.

This statement must be submitted to the Engineer within 90 Calendar Days from the date the voucher was mailed to the Contractor, according to 00195.90(b). Any request for compensation not submitted and supported by an itemized statement within the 90 Calendar Day period will not be paid by the Agency. This does not limit the application of Section 00199.

#### **(b) Acceptance or Rejection of Request:**

**(1) Consideration of Request** - The Engineer will consider and investigate the Contractor's request for correction of compensation submitted according to 00195.95(a), and will promptly advise the Contractor of acceptance or rejection of the request in full or in part.

**(2) Acceptance of Request** - If the Engineer accepts the Contractor's request(s) in full or in part, the Engineer will prepare a post-final Contract payment voucher, including all accepted corrections, and will forward it to the Contractor.

**(3) Rejection of Request** - If the Engineer rejects the request(s) in full, the Engineer will issue a written notice of rejection and mail it to the Contractor.

**(4) Contractor Objection to Revised Voucher or Notice of Rejection** - If the Contractor disagrees with the revised voucher or notice of rejection, the Contractor may seek review and resolution according to the procedure specified in 00199.40. If the Contractor fails to submit a request for 00199.40 review within 30 Calendar Days after the Engineer mails a post-final Contract payment voucher or notice of rejection, the Contractor waives all rights to a claim based on errors in quantities and amounts.

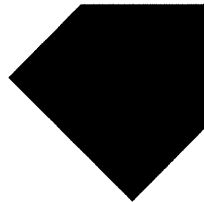
#### **00195.96 Waiver of Claims:**

**(a)** The making and acceptance of final payment will constitute:



**(1)** A waiver of all Claims by Agency against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to 00150.90, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

**(2)** A waiver of all Claims by Contractor against Agency other than those previously made in accordance with the requirements herein and expressly acknowledged by Agency in writing as still unsettled.



## Section 00196 - Payment for Extra Work

**00196.00 General** - Only work not included in the Contract as awarded but deemed by the Engineer to be necessary to complete the Project (see 00140.60) will be paid as Extra Work. Regardless of alterations and changes, any item of Work provided for in the Contract will not constitute Extra Work. Payment for alterations and changes to Work will be made according to 00195.20.

Compensation for Extra Work will be paid only for Work authorized in writing by the Engineer and performed as specified. Work performed before issuance of the Engineer's written authorization shall be at the Contractor's risk. Extra Work will be paid as determined by the Engineer, according to 00196.10 and 00196.20.

**00196.10 Negotiated Price** - If the Engineer can reasonably determine a price estimate for Extra Work, the Engineer may then give written authorization to the Contractor to begin the Extra Work. As soon as practicable, but within 10 Calendar Days after that authorization, the Contractor shall respond in writing to the Engineer's Extra Work price estimate by submitting to the Engineer an Extra Work price quote. The price quote shall detail the following items related to the Extra Work:

- Types and amounts of Materials
- Hours of Equipment use and hours of labor
- Travel
- Overhead and profit
- Other costs associated with the proposed Extra Work

Pending approval of the price quote, the Engineer will maintain force account records of the Extra Work. As soon as practicable, but within 10 Calendar Days of receipt of a properly supported price quote, the Engineer will review the price quote and advise the Contractor if it is accepted or rejected. The Engineer will not accept a price quote that cannot be justified on a Force Account basis. If the Contractor's price is accepted, the Engineer will issue a Change Order, and the Extra Work will be paid at the accepted price.

**00196.20 Force Account** - If the Engineer and the Contractor cannot agree on a price for the Extra Work, the Engineer may issue a Force Account Work order requiring the Extra Work to be paid as Force Account Work. Force Account Work records and payment will be made according to Section 00197.



## Section 00197 - Payment for Force Account Work

**00197.00 Scope** - The Materials, Equipment and labor rates and procedures established in this Section apply only to Extra Work ordered by the Engineer to be performed as Force Account Work.

**00197.01 General** - Before ordering Force Account Work, the Engineer will discuss the proposed work with the Contractor, and will seek the Contractor's comments and advice concerning the formulation of Force Account Work specifications. The Engineer is not bound by the Contractor's comments and advice, and has final authority to:

- Determine and direct the Materials, Equipment and Labor to be used on the approved Force Account Work; and
- Determine the time of the Contractor's performance of the ordered Force Account Work.

Force account work performed by subcontractors will be measured and paid for on the same basis and in the same manner as force account work performed directly by the Contractor.

If the Engineer orders the performance of Extra Work as Force Account Work, the Engineer will record, on a daily basis, the Materials, Equipment and Labor used for the Force Account Work during that day. Engineer and the Contractor shall sign the record daily to indicate agreement on the Materials, Equipment and Labor used for the Force Account Work performed on that day.

The following shall be reflected on the daily record:

- Materials used in the Force Account Work as directed by the Engineer, except those furnished and paid under rental rates for use of Equipment;
- Equipment which the Engineer considers necessary to perform the Force Account Work. Equipment hours will be recorded to the nearest quarter hour;
- Labor costs, including that of Equipment operators and supervisors in direct charge of the specific operations while engaged in the Force Account Work; and
- The Engineer's and Contractor's signatures confirming its accuracy.

### 00197.10 Materials:

**(a) General** - The Contractor will be paid for Materials actually used in the Force Account Work as directed by the Engineer, except for those furnished and paid for under rental rates included with the use of Equipment. Payments will be at actual cost, including transportation costs to the specified location, from the supplier to the purchaser, whether the purchaser is the Contractor, a Subcontractor, or other forces. All costs are subject to the provisions of this Subsection.

**(b) Trade Discount** - If a commercial trade discount is offered or available to the purchaser, it shall be credited to the Agency, even though the discount may not have actually been taken. The Agency will not take any discounts for prompt or early payment, whether or not offered or taken.

**(c) Not Directly Purchased From Supplier** - If Materials cannot be obtained by direct purchase from and direct billing by the supplier, the cost shall be considered to be the price billed to the purchaser less commercial trade discounts, as determined by the Engineer, but not more than the purchaser paid for the Materials. No markup other than actual handling costs will be permitted.

**(d) Purchaser-Owned Source** - If Materials are obtained from a supply or source wholly or partly owned by the purchaser, the cost shall not exceed the price paid by the purchaser for similar Materials furnished from that source on Pay Items, or the current wholesale price for the Materials delivered to the Project Site, whichever is lower.

## 00197.20 Equipment:

**(a) General** - Equipment approved by the Engineer to perform the Force Account Work will be eligible for payment at the established rates only during the hours it is operated or on standby if so ordered by the Engineer. Equipment hours will be recorded on the daily record to the nearest quarter hour.

Except as modified by these provisions, Equipment use approved by the Engineer will be paid at the rental rates given in the most current edition of the Rental Rate Blue Books for Construction Equipment ("Blue Book"), Volumes 1, 2, and 3, published by Penton Media, Inc., and available from EquipmentWatch (phone 1-800-669-3282).

**(b) Equipment Description** - On the billing form for Equipment costs, the Contractor shall submit to the Engineer sufficient information for each piece of Equipment and its attachments to enable the Engineer to determine the proper rental rate from the Blue Book.

### **(c) Rental Rates (without Operator):**

**(1) Rental Rate Formula** - Rental rates for Equipment will be paid on an hourly basis for Equipment and for attachments according to the following formula:

$$\text{Hourly Rate} = \frac{\text{Monthly Base Rate} \times \text{Rate Adjustment Factor}}{176 \text{ hours/month}} + \text{Hourly Operating Rate}$$

Some attachments are considered "standard Equipment" and are already included in the monthly base rate for the Equipment. That information can be obtained from EquipmentWatch.

**(2) Monthly Base Rate** - The monthly base rate used above for the machinery and for attachments represents the major costs of Equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs.

**(3) Rate Adjustment Factor** - The rate adjustment factor used above will be determined by applying only the Model Year Adjustment to the Blue Book Rates. The Regional and User Defined Ownership/Operating Adjustments shall not apply.

**(4) Hourly Operating Rate** - The hourly operating rate used above for the machinery and for attachments represents the major costs of Equipment operations, such as fuel and oil, lubrications, field repairs, tires or ground engaging components, and expendable parts.

### **(5) Limitations -**

If multiple attachments are included with the rental Equipment, and are not considered "standard Equipment", only the attachment having the higher rental rate will be eligible for payment, provided the attachment has been approved by the Engineer as necessary to the Force Account Work.

Rental will not be allowed for small tools that have a daily rental rate of less than \$5, or for unlisted Equipment that has a fair market value of \$400 or less.

The above rates apply to approved Equipment in good working condition. Equipment not in good working condition, or larger than required to efficiently perform the work, may be rejected by the Engineer or accepted and paid for at reduced rates.

**(d) Moving Equipment** - If it is necessary to transport Equipment located beyond the Project Site exclusively for Force Account Work, the actual cost to transport the Equipment to, and return it from, its On-Site Work location will be allowed as an additional item of expense. However, the return cost will not exceed the original delivery cost. These costs will not be allowed for Equipment that is brought to the Project Site for Force Account Work if the Equipment is also used on Pay Item or related Work.

If transportation of such Equipment is by common carrier, payment will be made in the amount paid for the freight. No markups will be allowed on common carrier transportation costs. If the Equipment is hauled with the Contractor's own forces, transportation costs will include the rental rate of the hauling unit and the hauling unit operator's wage. If Equipment is transferred under its own power, the rental rate allowed for transportation time will be 75% of the appropriate hourly rate for the Equipment, without attachments, plus the Equipment operator's wage.



(e) **Standby Time** - If ordered by the Engineer, standby time will be paid at 40% of the hourly rental rate calculated according to this Subsection, excluding the hourly operating rate. Rates for standby time that are calculated at less than \$1 per hour will not be paid. Payment will be limited to not more than 8 hours in a 24-hour period or 40 hours in a one week period. Standby Time provisions shall also apply to Section 00195 - Payment.

(f) **Blue Book Omissions** - If a rental rate has not been established in the Blue Book, the Contractor may:

- If approved by the Engineer, use the rate of the most similar model found in the Blue Book, considering such characteristics as manufacturer, capacity, horsepower, age and fuel type;
- Request EquipmentWatch to furnish a written response for a rental rate on the Equipment, which shall be presented to the Engineer for approval; or
- Request that the Engineer establish a rental rate.

(g) **Outside Rental Equipment** - If Contractor-owned or Subcontractor-owned Equipment is not available, and Equipment is rented from outside sources, payment will be based on the actual paid invoice. Approval of the Engineer to rent from outside sources must be obtained prior to renting the equipment.

If the invoice specifies that rental rate does not include fuel, lubricants, field repairs, and servicing, an amount equal to the Blue Book hourly operating cost may be added for those items that were excluded.

The Agency may reduce the payment when the invoice amount plus allowance is higher than the amount authorized under (c) through (f) of this Subsection.

The provisions of 00180.20(c) apply to owner-operated Equipment.

**00197.30 Labor** - The Contractor will be paid for all labor engaged directly on Force Account Work, including Equipment operators and supervisors in direct charge of the specific force account operations, as follows:

(a) **Wages** - The actual wages paid to laborers and supervisors, if those wages are paid at rates not more than those for comparable labor currently employed on the Project, or at the recognized, current, prevailing rates in the locality of the Project.

(b) **Required Contributions** - The actual cost of industrial accident insurance, unemployment compensation contributions, payroll transit district taxes, and social security for old age assistance contributions incurred or required under statutory law and these Specifications. The actual cost of industrial accident insurance is the National Council on Compensation Insurance (NCCI) rate for the assigned risk pool for the appropriate work class multiplied by the experience modification factor for the Contractor.

(c) **Required Benefits** - The actual amount paid to, or on behalf of, workers as per diem and travel allowances, health and welfare benefits, pension fund benefits, or other benefits when such other benefits are required by a collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Project.

No overtime will be compensated unless authorized in advance of performing the work by the Engineer.

**00197.80 Percentage Allowances** - To the Contractor's actual costs incurred, as limited in this Section 00197, amounts equal to a percentage markup of such costs will be allowed and paid to the Contractor as follows:

Subsection	Percent
00197.10 Materials	17
00197.20 Equipment	17
00197.30 Labor	22

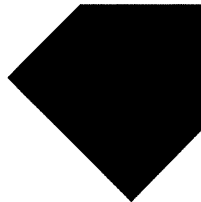
When a Subcontractor performs ordered Force Account Work, the Contractor will be allowed a supplemental markup of 8% on each Force Account Work order.

These allowances made to the Contractor will constitute complete compensation for bonds, insurance, overhead, general and administrative expense, profit, and all other Force Account Work costs that were incurred by the Contractor, or by other forces that the Contractor furnished. No other reimbursement, compensation, or payment will be made.

**00197.90 Billings** - Billings for Force Account Work by the Contractor shall be submitted for the Engineer's approval on forms provided by the Agency or approved by the Engineer. Billings for Materials (other than Incidental items out of the inventory of the Contractor or Subcontractors), rental Equipment from sources other than the Contractor or Subcontractors, and Special Services, shall be accompanied by copies of invoices for the goods and services. The invoices shall be fully itemized showing dates, quantities, unit prices, and complete descriptions of goods and services provided. Invoices for amounts of \$10 or less per invoice are not required, unless requested by the Engineer.

Costs included on the billings shall comply with 00197.01(a) and 00197.10 through 00197.40.

When a billing for Force Account Work has been paid at the Project level, no further corrections will be made because of further review if those corrections amount to less than \$10.





## Section 00199 - Disagreements, Protests, and Claims

**00199.00 General** - This Section details the process through which the parties agree to resolve any disagreement concerning additional compensation or concerning a combination of additional compensation and Contract Time. (See 00180.80 for disagreements and claims concerning additional Contract Time only, and 00195.95 for disagreements and claims concerning correction of final compensation.) The Agency will not consider direct disagreements, protests, or claims from subcontractors, Suppliers, or any other Entity not a party to the Contract.

**00199.10 Procedure for Resolving Disagreements** - When disagreements occur concerning additional compensation or a combination of additional compensation and Contract Time, the Contractor shall first pursue resolution through the Engineer of all issues in the dispute, including without limitation the items to be included in the written notice in 00199.20. If the discussion fails to provide satisfactory resolution of the disagreement, the Contractor shall follow the protest procedures outlined in 00199.20. If the Engineer denies all or part of the Contractor's protest, and the Contractor desires to further pursue the issues, the Contractor shall submit a claim for processing according to 00199.30.

**00199.15 Inappropriate Protest or Claim** - It shall be presumed that the Contractor submits a protest or claim for additional compensation in good faith, based upon facts which reasonably support the Contractor's position and with full knowledge and understanding of the injury done to the Agency when notice of differing Project Site conditions or claims for additional compensation are not submitted in a timely manner as required under the Contract. Accordingly, the submission of a protest or claim without the concurrent submission of evidence that reasonably supports the protest or claim, or the submission of a protest or claim in an untimely manner will constitute a waiver of the protest or claim.

**00199.20 Protest Procedure** - If the Contractor disagrees with anything required in a Change Order or other written or oral order from the Engineer, including any direction, instruction, interpretation, or determination, or if the Contractor asserts a disagreement or dispute on any other basis, except 0195.95, that, in the Contractor's opinion, entitles or would entitle the Contractor to additional compensation or a combination of compensation and Contract Time, the Contractor shall do all of the following in order to pursue a protest and preserve its claim:

(a) **Oral Notice** - Give oral notice of protest to the Engineer and outline the areas of disagreement before starting or continuing the protested Work.

(b) **Written Confirmation of Oral Notice** - Not later than the end of the next business day following the day that oral notice of protest is given, deliver written documentation to the Engineer of the oral notice that includes the notice of protest and the areas of disagreement.

(c) **Written Notice** - File a proper written notice of protest with the Engineer within 7 Calendar Days after receiving the protested order. In the notice the Contractor shall:

- Describe the acts or omissions of the Agency or its agents that allegedly caused or may cause damage to the Contractor or to the Project, citing specific facts, persons, dates and Work involved;
- Describe the Contractor's proposed alternative to the Work ordered, if any, which will avoid damage to Contractor or to the Project;
- Describe the nature of the damages;
- Cite the specific Contract provision(s), if any, that support the protest;
- Include the estimated dollar cost, if any, of the protested Work, and furnish a list of estimated Materials, Equipment and labor for which the Contractor might request additional compensation; and
- If additional compensation is estimated to be due, include the estimated amount of additional time required, if any.

**FAILURE TO COMPLY WITH THIS NOTICE REQUIREMENT RENDERS THE NOTICE IMPROPER AND SHALL CONSTITUTE A WAIVER OF ANY CLAIM FOR ADDITIONAL COMPENSATION OR A COMBINATION OF ADDITIONAL COMPENSATION AND CONTRACT TIME FOR ANY PART OF THE PROTESTED WORK.**



**(d) Engineer's Record and Response** – The Engineer will file a copy of each written notice of protest in the Project records and will issue a written response to the protest within seven (7) work days of receipt of a timely filed written notice of protest. The Engineer has no responsibility to evaluate the protest unless the Contractor has timely filed a proper notice submitting all of the above information.

**(e) Final Documentation of Claim** - Within 60 Calendar Days following completion of the protested work, Contractor shall provide the Engineer with complete documentation of protested work, listing exact materials, equipment and labor used for the work and the dollar amount requested for each. If the claim is accepted, no additional compensation will be awarded based on documentation submitted after this deadline. If the claim is denied or if the Contractor is not satisfied with the decision by the Engineer, the amount claimed by the Contractor in any subsequent Step or proceeding may not exceed the dollar amount requested under this subsection.

**(f) Records** - Keep complete records of all costs and time incurred throughout the protested Work, and allow the Engineer access to those and other supporting records. Provide daily records of protested Work, on a weekly basis, on a schedule to be set by agreement with the Engineer.

**(g) Comparison of Records** - Provide the Engineer adequate facilities for keeping cost and time records of the protested Work. The Contractor and the Engineer will compare records and either bring them into agreement at the end of each day, or record and attempt to explain any differences.

**(h) Work to Proceed** - In spite of any protest, proceed promptly with the Work ordered by the Engineer.

**(i) Evaluation of Protest** - The Engineer has no responsibility for evaluating a protest that is not timely filed, or for which adequate supporting documentation has not been made available to the Engineer. Provided the procedures above are followed, the Engineer will promptly evaluate all protests, after the Contractor has fully complied with the requirements described in 00199.20(c), Written Notice. If the protest is denied, the Engineer will notify the Contractor in writing of the reasons for full or partial denial. If a protest is found to be valid, the Engineer will, within a reasonable time, make an equitable adjustment of the Contract. Adjustment of time will be evaluated according to 00180.80.

The Engineer has no responsibility for evaluating and may reject a protest that does not comply with 00199.20(b). If the protest is rejected, the Engineer will notify the Contractor in writing of the reasons for rejection.

**(j) Protest Evaluation by Third Party Neutral** - If the Engineer agrees that the Contractor has fully complied with the requirements described in 00199.20(b), and if the Engineer fully or partially denies, in writing, the Contractor's protest according to 00199.20(f), the Contractor may request that a mutually selected Third Party Neutral review the protest. Procedures for selecting, using, and paying for the cost of the Third Party Neutral will be specified by Change Order.

If the Contractor does not accept the Engineer's evaluation of the protest, or either the Contractor or Engineer disagrees with the resolution recommended by the Third Party Neutral, the Contractor may pursue a claim as described in 00199.30.

### **00199.30 Claims Procedure:**

**(a) General** - If the Contractor believes that additional compensation is due, or a combination of additional compensation and Contract Time, and has pursued and exhausted all the procedures provided in 00199.10 and 00199.20 to resolve a disagreement and protest, the Contractor may file a claim.

The Agency's Contract is with the Contractor. There is no contractual relationship between the Agency and any subcontractors, Suppliers or any Entity other than the Contractor. It is the Contractor's responsibility to fully evaluate any claim before presenting it to the Agency. In addition, when a claim includes Work done or costs incurred by any subcontractors, Suppliers, or any Entity other than the Contractor, the Contractor remains solely responsible for presenting the claim to the Agency.

Claims that include Work done or costs incurred by subcontractors, Suppliers, or any Entity other than the Contractor will not be considered by the Agency unless the Contractor has:

- Completed and provided its own written evaluation of the claim;
- Verified by its own independent review and evaluation of the amount of compensation sought; and
- Certified the claim in accordance with 00199.30(b) (Part 10).



**(b) Claims Requirements** - At any time during the progress of the Work, but not later than 45 Calendar Days following the date of the Second Notification, the Contractor shall submit to the Engineer in writing, claims for additional compensation or a combination of additional compensation and Contract Time additional to that specified in the Contract. For a claim not submitted within the 45 day limit, that has not met the requirements of 00199.20, or is not filed as provided in 00199.30, the Contractor waives any claim for additional compensation or for additional compensation and Contract Time, and the Agency may reject the claim.

Written claims to the Engineer or the Agency by the Contractor shall be delivered to the Agency address shown in the Special Provisions, unless a different address is agreed to by the Engineer, and shall be delivered:

- By U.S. Postal Service first class mail or priority mail (which at the sender's option may include certified or registered mail return receipt requested); or
- By overnight delivery service of a private industry courier.

Claims will be considered as having been received by the Agency:

- At the time of actual receipt or 7 Calendar Days after the postmarked date when deposited for delivery by first class or priority mail, whichever is earlier; or
- At the time of actual receipt or 3 Calendar Days after deposit with a private industry courier for overnight delivery service, whichever is earlier.

The Agency reserves the right at any time and at any step in the claim decision or review process to request additional information, records or documentation related to the claim or the Contract either directly or through agents working toward resolution of the disputed or claimed events and issues.

Claims shall be made in writing, and shall include all information, records and documentation necessary for the Agency to properly and completely evaluate the claim.

To be considered, claims for additional compensation, or for additional compensation and Contract Time, shall be completed according to 00199.30 and shall be submitted with the required information and in the format below and labeled as required below for each claimed issue:

**(Part 1)** Summary (label page 1.1 through page 1.X) - In the summary, include a detailed, factual statement of the claim for additional compensation and Contract Time, if any, with necessary dates and locations of Work involved in the claim and the dates of when the event arose. Also include detailed facts supporting the Contractor's position relative to the Engineer's decision (see 00199.20(f));

**(Part 2)** Proof of notice (label page 2.1 through page 2.X) - Submit a copy of the written notice, with all attachments, that was given to the Agency. Include the date when that written notice and the date when oral notice was given:

**(Part 3)** Copies of the Contract Specifications that support the Contractor's claim (label page 3.1 through page 3.X);

**(Part 4)** Theory of entitlement supporting the claim (label page 4.1 through page 4.X) - Include a narrative of how or why the specific Contract Specifications support the claim and a statement of the reasons why such Specifications support the claim;

**(Part 5)** Itemized list of claimed amounts (label page 5.1 through page 5.X) - Claimed damages that resulted from the event with a narrative of the theories and records and documents used to arrive at the value of the damages;

**(Part 6)** Additional Contract Time requests (label page 6.1 through page 6.X) - If the claim is for a combination of additional compensation and Contract Time, submit a copy of the schedule that was in effect when the event occurred and a detailed narrative which explains how the event impacted Contract Time. In addition, if an Agency-caused delay is claimed:

- Include the specific days and dates under claim;
- Provide detailed facts about the specific acts or omissions of the Agency that allegedly caused the delay, and the specific reasons why the resulting delay was unreasonable; and

- Provide a schedule evaluation that accurately describes the impacts of the claimed delay.
- Also see 00180.80 for additional requirements regarding claims for Contract Time and causes that are eligible and ineligible for consideration;

**(Part 7)** Copies of actual expense records (label page 7.1 through page 7.X) - Include documents that contain the detailed records and which support and total to the exact amount of additional compensation sought. Include the information and calculations necessary to support that amount. That amount may be calculated on the basis of Section 00197, if applicable, or may be calculated using direct and indirect costs presented in the following categories:

- Direct Materials;
- Direct Equipment. The rate claimed for each piece of Equipment shall not exceed the actual cost. In the absence of actual Equipment costs, the Equipment rates shall not exceed 75 percent of those calculated under the provisions of 00197.20. For each piece of Equipment, the Contractor shall include a detailed description of the Equipment and attachments, specific days and dates of use or standby, and specific hours of use or standby;
- Direct labor;
- Job overhead;
- General and administrative overhead; and
- Other categories as specified by the Contractor or the Agency;

**(Part 8)** Supporting records and documents (label page 8.1 through page 8.X) - Include copies of, or excerpts from the following:

- Any documents that support the claim, such as manuals standard to the industry and used by the Contractor; and
- Any daily reports or diaries related to the event, photographs or media that help explain the issue or event (optional), or all other information the Contractor chooses to provide (optional);

**(Part 9)** Certification (label page 9.1 through 9.X) - A certified statement, signed by a person authorized to execute Change Orders, by the Contractor, subcontractor, Supplier, or Entity, originating the claim, as to the validity of facts and costs with the following certification:

*Under penalty of law for perjury or falsification, the undersigned, (Name), (Title), (Company) certifies that this claim for additional compensation for Work on the Contract is a true statement of the actual costs incurred (in the amount of \$ \_\_\_\_\_, exclusive of interest) and is fully documented and supported under the Contract between the parties.*

Signature: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public

My commission expires \_\_\_\_\_.

**(Part 10)** Contractor evaluation of a lower tier claim (label page 10.1 through 10.X) - If the claim includes Work done or costs incurred by any subcontractors, Suppliers, or any Entity other than the Contractor, the following are required:

- Data required by the other Subsections of 00199.30(b);
- Copies of the Contractor's, subcontractor's, Supplier's and Entity's, at all tiers above the level of which the claim originates, separate evaluation of entitlement;
- Copies of the Contractor's, subcontractor's, Supplier's and Entity's, at all tiers above the level of which the claim originates, independent verification and evaluation of the amount of damages sought; and



- A person authorized to execute Change Orders on behalf of the Contractor, subcontractor, Supplier and Entity, at all tiers above the level of which the claim originates, must sign a statement with the following certification:

*Under penalty of law for perjury or falsification, the undersigned, (Name) (Title), (Company) certifies that this claim originating from the subcontractor, Supplier or Entity (Company) for additional compensation for Work on the Contract is a reasonable statement, independently verified, of the costs incurred (in the amount of \$\_\_\_\_\_, exclusive of interest) and is fully documented and supported under the Contract between the parties.*

Signature: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public

My commission expires \_\_\_\_\_

If the Engineer determines that additional information, records or documentation is needed to allow proper evaluation of the claim submittal, the Engineer will request the information, records or documentation. The Contractor shall submit to the Engineer within 14 Calendar Days, or as otherwise agreed by the parties, the required additional information, records and documentation.

If the Engineer determines that the claim submittal with the additional information, records and documentation submitted is incomplete and not accepted as a claim, the Engineer will notify the Contractor in writing and the submittal will be rejected and will not be considered under 00199.40.

**(c) Records Requirements** - The Contractor shall comply with 00170.07.

**(d) Compliance Required** - Full compliance by the Contractor with the provisions of this Section is a condition precedent to the commencement of any lawsuit by the Contractor to enforce any claim.

**00199.40 Claim Decision; Review; Exhaustion of Administrative Remedies** - The Agency intends to resolve all claims at the lowest possible administrative level. The Engineer will also determine whether multiple claims should be advanced separately or together.

If the Engineer denies the claim for additional compensation or a combination of additional compensation and Contract Time, in full or in part, according to 00199.40(a), the Contractor may request review of the denial. The disputed claim for additional compensation or a combination of additional compensation and Contract Time may then be resolved, in full or in part, at any of the progressive steps of claim review procedure as specified in (b) through (c) of this Subsection.

If the Engineer has denied a claim, in full or in part, for Contract Time only according to 00180.80, or has denied a claim, in full or in part, for correction of final compensation according to 00195.95, those disputed claims may then be resolved, in full or in part, at either of the two progressive steps of claim review procedure as specified in (b) through (c) of this Subsection.

A person authorized by the Contractor to execute Change Orders on behalf of the Contractor must be present and attend all claim hearings. For all claims, all of the actions and review under each step of the review process shall occur before the review can be advanced to the next higher step.

If, at any step in the claim decision or review process, the Contractor fails to promptly submit requested information or documentation that the Agency deems necessary to analyze the claim, the Contractor is deemed to have waived its right to further review, and the claim will not be considered properly filed and preserved.

**(a) Decision by the Engineer** - The Engineer will, as soon as practicable, consider, investigate, and evaluate a Contractor's claim for additional compensation, or for a combination of additional compensation and Contract Time, if submitted as required by 00199.30.



Once the Engineer determines the Agency is in receipt of a properly submitted claim, the Engineer will arrange a meeting, within 21 Calendar Days or as otherwise agreed by the parties, with the Contractor in order to present the claim for formal review and discussion.

If the Engineer determines that the Contractor must furnish additional information, records or documentation to allow proper evaluation of the claim, the Engineer will schedule a second meeting, to be held within 14 Calendar Days or as otherwise agreed by the parties, at which the Contractor shall present the requested information, records and documentation.

The Engineer will provide a written decision to the Contractor within 30 Calendar Days of the last Engineer-level meeting.

If the Contractor does not accept the Engineer's decision, the Contractor may, within 10 Calendar Days of receipt of the written decision, request in writing that the Engineer arrange a review at Step 1 (see (b) below).

**(b) Step 1: Public Works Director Level Review** - The Contractor shall request that the Engineer arrange a meeting with the Public Works Director or the Public Works Director's designee, as determined by the Public Works Director, in order to present the denied or partially denied claim for formal review and discussion. The meeting will take place within 21 Calendar Days of the Agency's receipt of the request, or as otherwise agreed by the parties.

If the Public Works Director (or designee) determines that the Contractor must furnish additional information, records or documentation to allow proper evaluation of the claim, the Public Works Director (or designee) will schedule a second meeting, to be held within 14 Calendar Days, or as otherwise agreed by the parties, at which the Contractor shall present the requested information, records and documentation.

The Public Works Director (or designee) will provide a written decision to the Contractor within 30 Calendar Days of the last meeting with the Public Works Director (or designee).

The claim is subject to 00199.60, if not all of the records requested by the Public Works Director (or designee) were furnished. If applicable, advancement of the claim is subject to the provisions of 00199.60 regarding waiver and dismissal of the claim or portions of the claim.

If the Contractor does not accept the decision, the Contractor may, within 180 Calendar Days from the date of receipt of the Public Works Director (or designee) written decision or within 90 Calendar Days of the date of Second Notification, whichever is later, initiate Step 2 as set forth in subsection (c) below.

**(c) Step 2: Arbitration and Litigation** - The Contractor must follow each step in order, and exhaust all available administrative remedies before resort to arbitration and litigation. Litigation of a claim that cannot be resolved in Step 1 shall be initiated by filing a complaint in the Circuit Court for the State of Oregon in the county where the Agency's main office is located that contains a stipulation to arbitration under ORS 36.410. The claim and all cross and counter-claims filed in response to the complaint shall be submitted to the Court Arbitration Program set forth in ORS 36.400 to 36.425, Chapter 13 of the Oregon Uniform Trial Court Rules and the Circuit Court supplemental local rules concerning arbitration. Either party may seek, and shall be entitled to, an order directing the other party to submit to arbitration as provided herein and to judgment for its costs, expenses and attorney fees in obtaining and enforcing the order.

In no event shall this Subsection be construed as a waiver by the Agency or by the State of Oregon on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

**(d) Payment of Costs, Expenses and Attorney's Fees** - The prevailing party shall be entitled to an award for reasonable costs and expenses incurred after the initiation of Step 2, including costs and expenses incurred for arbitration, trial de novo and on appeal. Costs and Expenses shall include, but shall not be limited to, reasonable attorney fees and expenses, arbitrator fees and expenses, and costs of discovery.

As used in this subsection 00199.40(d), "prevailing party" for an arbitration award means (1) a Contractor who has received an arbitration award, exclusive of interest, costs and expenses, that is more than the dollar amount claimed by the Contractor in its Final Documentation of Claim under 00199.20(d) or (2) the Agency if there is no arbitration award to the Contractor or if the arbitration award to the Contractor, exclusive of interest, costs and



expenses, is less than the dollar amount of the award in the Step 1 decision. For all other arbitration awards, there shall not be a "prevailing party."

The award of costs and expenses after trial de novo shall be made as provided for in ORS 36.425. The award of costs and expenses after appeal from a judgment entered after trial de novo shall be to the prevailing party designated as such by the appeals court.

The Contractor shall comply with 00170.00.

**00199.50 Mediation** - Notwithstanding the formal claims procedure specified above, the parties may enter into nonbinding mediation by mutual agreement at any time, in which case the parties may also agree to suspend the time requirements in Section 00199 pending the outcome of the mediation process. The rules, time and place for mediation, as well as selection of the mediator, shall be established by mutual agreement. Costs shall be divided equally between the Contractor and the Agency. Either party may terminate mediation at any time upon 5 Calendar Days notice to the other, after which the time requirements of Section 00199 shall be automatically reinstated and shall resume from the point at which the time requirements were suspended.

**00199.60 Review of Determination Regarding Records** - If not all of the records requested by the Agency under 00199.40(c) Step 2 were provided, then the Agency will determine:

- If the records are of the type described in 00170.07; and
- If the records have not been maintained or the records, or access to the records, has not been provided to the Agency as required by 00170.07 and this Section; and
- If the records are material and necessary for proper evaluation of part or all of the claim; and
- The portions of the claim for which the records are material and necessary for proper evaluation.

If the Agency makes the foregoing determinations, then subject to the review process described below, all portions of the claim for which the Agency determined the records are material and necessary for proper evaluation are immediately waived and irrevocably dismissed.

Even if the records have not been maintained or the records, or access to the records, have not been provided to the Agency in a given instance, the Agency may determine that sufficient records have been provided for the Agency to properly evaluate the claim in that instance. If the Agency makes this determination, the claim or portions of the claim will not be waived or dismissed under this provision.

If the Contractor does not accept the Agency written determination that the records are material and necessary for proper evaluation of part or all of the claim, and the portions of the claim for which the records are material and necessary, the Contractor may, within 14 Calendar Days of receipt of the Agency determination, request, in writing, a review of such determination by the Public Works Director (or designee). If the Contractor does not request a review of the Agency determination, the Agency determination shall then become the Agency's final determination as of the expiration of the time limit to request review.

If the Contractor requests the review, the Public Works Director (or designee) will schedule a review meeting within 14 Calendar Days, or as otherwise agreed by the parties, of when the Public Works Director (or designee) receives the written review request. The Agency and the Contractor will each have an opportunity to explain their respective positions at the review meeting in a manner determined by the Public Works Director (or designee).

Within 10 Calendar Days of the review meeting, the Public Works Director (or designee) will issue a written proposed finding of whether the records not maintained or not provided to the Agency, or for which access was not provided to the Agency, are material and necessary for proper evaluation of part or all of the claim. If the Public Works Director (or designee) makes that finding, then the Public Works Director (or designee) will also make a proposed written finding as to what portions of the claim the records are material and necessary and, therefore, waived and irrevocably dismissed.

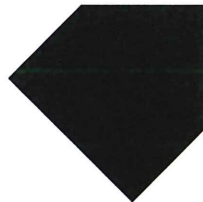
Even if the records have not been maintained or the records, or access to the records, have not been provided to the Agency in a given instance, the Public Works Director (or designee) may determine that sufficient records have been provided for the Agency to properly evaluate the claim in that instance. If the Public Works Director (or designee) makes this determination, then the claim or portions of the claim will not be waived or dismissed under this provision.

The Public Works Director's (or designee) findings will be submitted to the Contractor. The Public Works Director's (or designee) findings are the Agency's final determination.

If the Agency's final determination is that the records are material and necessary for proper evaluation of part or all of the claim, then the claim or that portion of the claim for which the records are material and necessary is waived and irrevocably dismissed, unless the Contractor provides the records, or access to the records, to the Agency within 5 Calendar Days of the Agency's final determination. If the Contractor provides the records, or access to the records, within this time limit, the Agency will schedule a meeting with the Contractor within 14 Calendar Days or as otherwise agreed by the parties, to discuss the records.

The Agency's final determination that records are material and necessary for proper evaluation of part or all of the claim, and the Agency's final determination of the portions of the claim for which the records are material and necessary, shall be final and binding.

If the entire claim is waived and irrevocably dismissed pursuant to the Agency's final determination there will be no further decision by the Agency on the claim or further review of the claim under 00199.40 and the claim will not be eligible for mediation under 00199.50. If only portions of the claim are waived and irrevocably dismissed pursuant to the Agency's final determination, the Agency will provide a written decision to the Contractor regarding the remaining portions of the claim within 30 Calendar Days of the final Step 2 meeting, or the Agency's final determination regarding the records, whichever is later. There will be no further decision by the Agency on or further review under 00199.40 of the portions of the claim waived and irrevocably dismissed pursuant to Agency's final determination and those portions will not be eligible for mediation under 00199.50.





Certificate of Compliance

City of Warrenton,

225 S MAIN AVE. WARRENTON, OR 97146

ATTN: City of Warrenton Public Works Director

PROJECT NAME: SW Alder Avenue 2nd Street to 1st Street

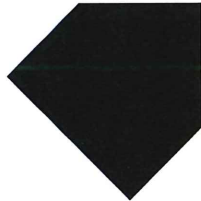
PROJECT LOCATION: SW Alder Avenue 2nd Street to 1st Street

I hereby certify that:

- A. All work on the above referenced contract has been performed and materials supplied in accordance with the plans, specifications and contract documents for the above work;
- B. There have been no substitutions of Subcontractors without prior notification to the City in accordance with ORS279C.585;
- C. Contractor and subcontractors performing work under this contract were registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.138 before commencing work under the contract;
- D. All payments due to all persons supplying labor or material for the performance of the work provided for in this contract have been made;
- E. All contributions or amounts due the Industrial Accident Fund from the contractor or subcontractors incurred in the performance of the contract have been paid;
- F. All sums withheld from employees under ORS 316.167 have been paid to the Department of Revenue.

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_



## **SPECIAL PROVISIONS**

### **PART 00100 – GENERAL CONDITIONS**

#### **Section 00120 – Bidding Requirements and Procedures**

##### **00120.01 Receipt of Bids; Opening** - Add the following:

Sealed bids will be received up to the hour of **2:00 PM** local time, on **XXXXXXXXXX**

Received by: Received at:

Collin Stelzig City Hall  
City of Warrenton Public Works Director 225 S MAIN AVE. WARRENTON, OR 97146

Bids will be publicly opened at the hour of **2:00 PM** local time, on **XXXXXXXXXX**

Opened by:

Adam Dailey, PE  
Design Engineer Consultant  
City Hall  
225 S. Main Ave. Warrenton, OR. 97138

##### **00120.02 Prequalification of Bidders** – Add the following:

Prequalification of bidders IS NOT required.

When prequalification is required, forms may be obtained from:

N/A  
N/A  
N/A  
N/A  
N/A

Prequalification applications must be received at the above location no less than seven (7) calendar days prior to bid opening. Required minimum prequalification class(es) of work for the Contractor (or Contractor in combination with proposed subcontractor(s) for this contract are:

N/A

##### **00120.03 Request for Solicitation Documents** – Add the following:

The contract documents may be viewed and downloaded by registering with QuestCDN online ([www.questcdn.com](http://www.questcdn.com)) or calling (952-233-1632). A contractor may view the Contract Documents at no cost on the QuestCDN website prior to deciding to become a Plan-holder. To be considered a Plan-holder for construction bids, a contractor must register on QuestCDN.com and purchase the contract documents, in digital form for downloading, at a cost of \$50.00. Registering as a Plan-holder is recommended for all prime contractors and subcontractors because Plan-holders will receive addendums and other contract document updates via QuestCDN.

For this project bids will ONLY be received and accepted via the online electronic bid service through QuestCDN.com. To access the electronic bid form, download the project documents and click the online bidding



button at the top of advertisement. Prospective bidders must be on the plan holders list through QuestCDN for bids to be accepted.

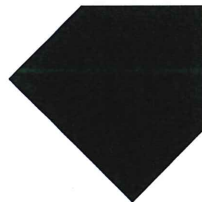
**00120.04 Pre-Bid Meeting** – Add the following:  
A MANDATORY pre-bid meeting will be held.

XXXXXX

225 S MAIN AVE. WARRENTON, OR 97146

Bids submitted by bidders who have not attended a MANDATORY pre-bid meeting will not be accepted and will be returned unopened.

Statements made by a City representative at the pre-bid meeting are not binding on City unless confirmed by written addendum. A project site tour will follow as part of the pre-bid meeting.



## Section 00150 – Control of Work

**00150.30 Deliver of Notices** – Contractor written notice to Engineer or Agency shall be delivered to:

Adam Dailey, PE  
Design Engineer Consultant  
A.M. Engineering  
PO Box 973 Seaside OR. 97138  
503-468-8600

**00150.50 Cooperation with Utilities** - This subsection is supplemented with the following:

The Contractor is required to coordinate construction activities with the gas company and notify the gas company immediately if conflicts are encountered.

**00150.55 Cooperation with Other Contractors** – This subsection is supplemental with the following:

The Contractor is required to coordinate construction activities with all Contractors included, or not included, in this project.

## Section 00165 – Quality of Materials

**00165.03 Testing by Agency** - The Agency at its own cost shall retain the services of a testing laboratory to conduct field testing on the compaction of subgrade, engineered fill, aggregate base, asphaltic concrete, pipe bedding and trench backfill. Areas failing to meet the density requirements shall be re-compacted by the Contractor immediately at no additional cost to Agency and tested again until passing.

Areas showing failing compaction results shall receive further attention without undue delay. Further attention may involve additional compaction efforts, other compaction methods, removal and recompaction of material or removal and replacement of material as required to obtain passing results.

No additional compensation will be made to the Contractor for down-time incurred as a result of testing or waiting for test results.

All additional Agency testing costs as a result of failing tests shall be borne entirely by the Contractor. All associated costs arising from any necessary additional work due to failing compaction test results, including removal and replacement of material, shall be borne by the Contractor.

Any subsequent settlement of any backfilled area during the Correction Period shall be considered to be the result of improper compaction and shall be promptly corrected by the Contractor at no cost to the Agency.

**00165.04 Costs of Testing** - Delete the second and third sentences of the first paragraph and add the following:

The Contractor shall conduct source-review tests of Aggregates for submittal to the Agency.



## Section 00170 – Legal Relations and Responsibilities

**00170.03 Furnishing Rights of Way and Permits** - The Agency will apply and pay for the City Grading/Erosion Control Permit. The Permit shall be picked up by and be in the Contractor's name. Prior to construction, the Contractor shall obtain, from the City, a Right-of-Way Permit and a Sidewalk and Driveway Permit. Permit fees shall be waived by the City.

**00170.10(a) Commercial Automobile Liability** – Combined single limit per occurrence shall be not less than \$1,000,000.

**00170.65(b)(1) Minimum Wage Rates** – BOLI Prevailing Wage Rates title page is included at the end of these Special Provisions.

BOLI Prevailing Wage Rates: **XXXX**

**00170.70(a) Commercial General Liability** – Combined single limit per occurrence shall not be less than \$1,000,000. Annual aggregate limit shall not be less than \$2,000,000.

**00170.70(c) Additional Insured** - The liability insurance coverages of 00170.70(a) shall include: Agency, the Agency's governing body, board, or Commission and its members, and the Agency's officers and employees as Additional Insureds, but only with respect to the Contractor's activities to be performed under the Contract. When federal transportation funding is involved, the liability coverages of 00170.70(a) shall also include the State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers, members and employees as additional insureds, but only with respect to the Contractor's activities to be performed under the Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The liability coverages of 00170.70(a) that are permitted by the Agency to be obtained by an appropriate subcontractor shall include all of the foregoing as Additional Insureds and shall also include Contractor and its officers and employees as Additional Insureds.

## Section 00180 – Prosecution and Progress

**00180.20(a) General** – The Contractor's own organization shall perform work amounting to at least 50% of the original Contract Amount.

**00180.40(a) In General** – Add the following to subsection:

Work hours shall be: 7:00 am - 6:00 pm.

unless otherwise approved by the Engineer.

**00180.41 Project Work Schedules** – A Type "A" Schedule shall be required for the Project.

**00180.41(a) Type "A" Schedule** – A Type "A" Schedule is required for this Project.

**00180.85(b) Liquidated Damages** – The amount of liquidated damages, per Calendar Day, shall be:

\$ 300.

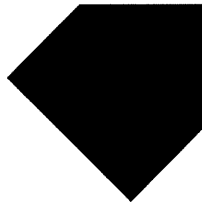
### **Section 00190 – Measurement of Pay Quantities**

**00190.00 Scope** – This section is supplemented with Section 00190 – Measurement of Pay Quantities included after the Bid Schedule in the Bid Form section of the Contract Documents.

### **Section 00199 – Disagreements, Protests, and Claims**

**00199.30(b) Claims Requirements** – Contractor written claims to Engineer or Agency shall be delivered to:

Adam Dailey, PE  
Design Engineer Consultant  
A.M. Engineering  
PO Box 973 Seaside OR. 97138  
503-468-8600





**PART 00200 – TEMPORARY FEATURES AND APPURTENANCES**

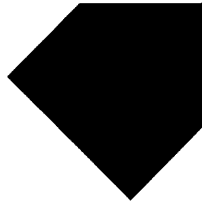
**Section 00205 - Field Laboratory, Weighhouse, Etc.**

Delete section in its entirety.

**Section 00210 Mobilization**

**00210.00 Scope** – Add the following to the subsection:

- Obtaining required bonds, insurance, permits, and licenses.
- Preparing and submitting shop drawings, "As-Built" drawings and other submittals.
- Removing equipment and extra materials from site upon completion of Work.
- All other work not identified in a separate bid item.



## Section 00220 – Accommodations for Public Traffic

**00220.02 Public Safety and Mobility** - In the eighth "bulletized" item, delete the words "as shown on the Plans".

**00220.03(a) Over-Dimensional Vehicle Restrictions** - Delete subsection in its entirety.

**00220.40(d) Adjacent to Excavations** - In the first "bulletized" item, delete the words "as shown on the standard drawings".

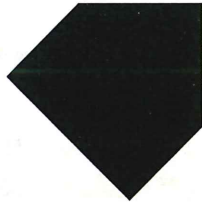
**00220.40(e)(1) Closed Lanes** - Add the following to the subsection:

Unless otherwise authorized in writing by the Engineer, the Contractor shall maintain two lanes of traffic on all streets adjacent to street affected by construction at all times.

Unless otherwise authorized in writing by the Engineer, the Contractor shall maintain two lanes of traffic on all streets affected by construction between the hours of 6:00 pm - 7:00 am.

Detours and closures will be allowed, but must be approved in writing by the Engineer in advance.

**00220.70 Opening Sections to Traffic** - In the second paragraph, delete the phrase "except watering ordered to protect the work or to alleviate dust will be paid as provided in Section 00340".





## Section 00225 – Work Zone Traffic Control

**00225.00 Scope** - Delete the phrase "according to the standard drawings, the traffic control plan (TCP) for the Project, these Specifications, or as directed" and replace with the phrase "traffic control plan (TCP) for the Project submitted by the Contractor and accepted by the Agency, these Specifications, or as directed".

**00225.05 Contractor Traffic Control Plan** - Delete the subsection in its entirety and replace with the following:

The Contractor shall submit a proposed TCP prepared by an engineer currently licensed in Oregon for the Agency's review and acceptance at least 14 days prior to start of any construction. The proposed TCP shall address all operational aspects of the Contractor's work, and shall include provisions for areas used by the Contractor for staging and storage of materials and equipment. The proposed TCP shall include order and duration of the TCP, all TCMs, TCDs, lane and street closures, and detours. If additional modifications are proposed by the Contractor to the Contractor's TCP as accepted by the Agency, submit modifications prepared by an engineer currently licensed in Oregon at least 7 days before beginning the construction activities that require the TCP changes.

The following parameters shall apply to the Contractor's Traffic Control Plan:

- Constraints, restrictions and coordination requirements as per 00220(e)(1), 00220(e)(2)(b) and 00220.40(f).
- Traffic control shall be designed to move traffic past the area smoothly, with proper and adequate advance signing.
- Wherever the existing roadway surface is disturbed by construction, and except where temporary paving is required, the Contractor shall regularly grade and maintain a smooth gravel surface for vehicular traffic traveling through and within the project area until the project is complete. Gravel will be swept from adjacent asphalt at the end of each working day.
- Access for Emergency vehicles shall be accommodated at all times.
- The Contractor shall have the responsibility of coordinating the needs of the abutting residents and businesses for parking and access.
- The Contractor shall coordinate its schedule of Work, operations and traffic control with the following organizations and agencies as applicable:

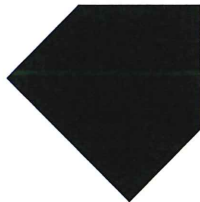
Warrenton School Buses, Cindy Kirby, Director	503-325-4550
Sunset Empire Transit, Jeff Hazen, Director	503-861-7433
Warrenton Police, Mathew J. Workman, Chief	503-861-2235
Recology Warrenton Regional Office, Carl Peters, General Manager	503-861-0578

- The Contractor shall retain a Traffic Control Supervisor for the project, with responsibility and authority to continuously monitor and direct traffic control operations at all times on the project. The Traffic Control Supervisor shall have specific training in temporary traffic control for construction. The Contractor shall provide the Traffic Control Supervisor's name and phone number and training credential documentation to the Agency at the pre-construction conference. The Traffic Control Supervisor shall not be changed by the Contractor without prior written notification to the Agency and providing the same information for the new Traffic Control Supervisor and receiving Agency acceptance of the change.

**00225.90(a) Method "B" - Lump Sum Basis – Delete subsection and replace with the following:**

Work zone traffic control will be paid for at the Contract lump sum amount for the item "Temporary Work Zone Traffic Control, Complete".

Payment will be payment in full for all work covered under this Section.





## **Section 00280 – Erosion and Sediment Control:**

### **00280.00 Scope** – Add the following to the subsection:

An Oregon NPDES 1200-C Permit is not required for this project. Erosion control measures are included in the contract documents. The Contractor shall be responsible for full implementation of the erosion control measures and shall take proper actions to prevent contaminants, including sediment, from entering the storm drain system or otherwise being conveyed to Waters of the State. Take immediate corrective action if directed by the Agency or Engineer, or if the Contractor observes contaminants, including sediment entering the storm drain system.

(a) Notify the Agency of the need to prepare additional erosion control measures, whenever there is a change in construction activities or operations that may affect the discharge of significant quantities or pollutants to surface waters, ground waters, storm drainage systems. The erosion control measures shall be amended if they do not effectively achieved the objective of reducing pollutants in stormwater discharges.

**00280.04 Erosion and Sediment Control Plan on Agency Controlled Lands** - In the last sentence of the first paragraph, delete "before" and replace with "after".

**00280.05 Erosion and Sediment Control Plan on Non-Agency Controlled Lands** - In the last sentence of the first paragraph, delete "before" and replace with "after".

**00280.30 Erosion and Sediment Control Manager** - Add the following to the first sentence:

ESCM shall assume the duties as included in this subsection as well as those identified for the Permittee's Site Inspector as per the ESCP in the Supplemental Drawings including inspection frequency and reporting.

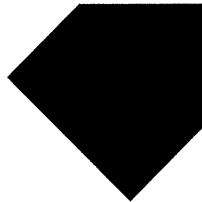
In the second paragraph, delete "10 days before" and replace with "at".

## **Section 00290 – Environmental Protection**

**00290.20(b) Fuel Storage** – Delete the second sentence of the second paragraph.

**00290.30(b) Pollution Control Plan:** In the first paragraph, delete “10 days before” and replace with “at”.

Delete the last paragraph which begins “A Pollution Control Plan Contractor Packet...”





**PART 00300 – ROADWORK**

**Section 00310 – Removal of Structures and Obstructions**

**00310.44 Earthwork in Connection with Removal** – Add the following to subsection:

Catch basins and manholes removed shall be backfilled with compacted Class B Backfill in accordance with 00405.14 from the bottom of the excavation to the top of the street subgrade.

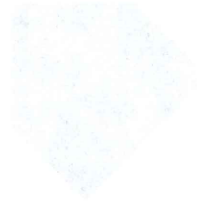
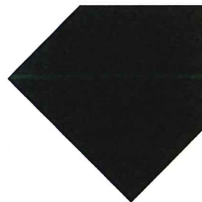
**00310.92 Separate Item Basis** – Replace "(g) Asphalt Pavement Saw Cutting .....  
Foot" with

"(g) Asphalt Pavement and Concrete Saw Cutting ..... Foot"

**Section 00390 – Riprap Protection**

**00390.90 Payment** – Add the following to subsection:

(f) Riprap Basins with Geotextile..... Cubic Yard



## PART 00400 – DRAINAGE AND SEWERS

### Section 00405 – Trench Excavation, Bedding, and Backfill

**00405.00 Scope** – In the first paragraph delete " This Work consists of excavating trenches, constructing trench foundations, and placing bedding, pipe zone material and backfill." And replace with "This Work consists of potholing for determination of existing utilities, excavating trenches, constructing trench foundations, and placing bedding, pipe zone material and backfill."

#### 00405.02 Definitions

**Pipe Bedding:** Add the following:

The total bedding depth shall be a minimum of 6 inches below the bottom outside surface of the barrel of the pipe for the full width of the trench.

**Pipe Zone:** Delete "8 inches" and replace with "12 inches".

**Trench Excavation:** Add the following:

Trench excavation shall be classified as common excavation/with the exception of rock excavation.

**Trench Backfill:** Delete: "Furnishing, placing, and compacting material other than Controlled Low-Strength Material (CLSM) in the trench, between the top of the pipe zone material and the bottom of the pavement base Rock, ground surface or surface material." And replace with "Furnishing, placing, and compacting imported crushed aggregate material, other than Controlled Low-Strength Material (CLSM), free from wood waste, organic material, and other extraneous or objectionable materials, in the trench, between the top of the pipe zone material and the bottom of the pavement base Rock, ground surface or surface material."

**Lateral Restraint Shoring System:** Add the following:

Lateral Restraint Shoring System is defined as a shoring system with full face braced shields tightly against the trench sidewalls throughout trench excavation and pipe installation to maintain lateral stability.

**00405.11 Trench Foundation** - Delete the four "bulleted" items and replace with the following: 2-1/2"-0 base aggregate in conformance with 02630.10.

**00405.12 Bedding** – Add the following to subsection:

Pipe Bedding material shall be 3/4" – 0 base aggregate material in conformance with 02630.10.

**00405.13 Pipe Zone Material** – Add the following to subsection:

Pipe Zone Material shall be 3/4" – 0 base aggregate material in conformance with 02630.10.

**00405.14 Trench Backfill** - Remove the following from the subsection:

(a) **Class A Backfill** - Use native or common material that, in the opinion of the Engineer, meets the characteristics required for the specific surface loading or other criteria of the backfill zone.

(c) **Class C Backfill** - Use clean sand with no particle size larger than 1/4 inch.

(d) **Class D Backfill** - Use pit run or bar run material, well-graded from coarse to fine. The maximum dimension shall be 3 inches.

(e) **Class E Backfill** - Use CLSM conforming to Section 00442.

**00405.16 Pipe Zone Locate Wire** – Add this subsection:

The Contractor shall install 12 gauge located directly over pipe centerline and on top of the pipe zone material (no more than 8" above the pipe crown) for all non-ferrous pipe. Wire color in conformance with 00445.11(e). Run wires into valve, cleanout and meter boxes, manholes and other structures to a point accessible from the cover. Locate wires to not hinder access into manholes. All tracer wire splices shall be with a "Protrace TW" connector or approved equal.



**00405.30 Quality Control Personnel** – Delete subsection in its entirety.

**00405.41(c) Trench Width** – Delete third and fourth sentences of subsection.

**00405.43 Dewatering** - This section is supplemented as follows:

Dewatering equipment shall be provided to remove and dispose of all surface water and groundwater entering excavations, trenches, or other parts of the work.

1. The Contractor is solely responsible to design, furnish, install, maintain, and operate all necessary dewatering wells, sump/pumps and other devices for dewatering all excavations. The Contractor's plan for the dewatering system shall be submitted to the Engineer at the preconstruction conference for review.
2. At all times have on the project sufficient dewatering devices for immediate use, including standby pumps in case other pumps become inoperable.
3. Provide a sufficient number of dewatering devices so as to hold the groundwater level at an elevation of not less than 1 foot below the lowest elevation of the pipe or other material to be placed. When groundwater is encountered, the Contractor shall assess the situation and develop a plan to accommodate dewatering. The Contractor shall be solely responsible for control of groundwater through dewatering and trench excavation control Plan. All costs for pumping, piping, settling and discharging of trench groundwater shall be considered incidental to the work for groundwater control pumping of up to 250 gpm. If conditions are such that additional pumps are required to remove water in excess of 250 gpm, the Contractor shall use the number and size of additional pumps, as required, to maintain a water-free trench.

If pumping in excess of 250 gpm is required, a change order will be negotiated to provide compensation to the Contractor shall be per 1140.40 of the Standard Specifications.

4. The dewatering operation shall be continuous, so that the excavated areas shall be kept free from water during subgrade preparation, while pipes are installed, and until backfill has been placed to the extent that no damage from hydrostatic pressure, flotation, or other cause will result.
5. Continue dewatering during backfilling operations such that the groundwater is at least 1 foot below the level of the compaction effort at all times. No compaction of saturated materials will be allowed.
6. If pumping is required on a 24 hour basis, requiring engine drives, then engines shall be equipped in a manner to keep noise to a minimum.
7. Dewatering devices must be adequately filtered to prevent the removal of fines from the soil.
8. Settle and/or filter all dewatering system collected flow through Contractor provided settling tanks and systems in order to meet Water Quality Standards; Beneficial Uses, Policies, and Criteria for Oregon (OAR 340-041-0036) prior to discharging.
9. Dispose of water in such a manner as to cause no injury or nuisance to public or private property, or be a menace to the public health.
10. The Contractor shall be responsible for any damage to existing structures, pavement, utilities, or of the new works caused by Contractor's dewatering activities or failure of any part of the Contractor's dewatering activities.

The Contractor shall be responsible for furnishing temporary drainage facilities to convey and dispose of surface water falling on or passing over the site.

**00405.44 Trench Foundation** - Delete the third sentence of the second paragraph and replace with the following: Place the trench foundation material in no more than 12-inch layers and compact according to 00330.43.

**00405.45 Pipe Bedding** - Add the following paragraph to subsection:

The Contractor shall place subsequent lifts of not more than 6-inches in thickness up to one foot above the top of the pipe, bringing lifts up together on both sides of the pipe.

Bedding material shall be compacted to 95% of the Standard Proctor maximum dry density (ASTM D698, AASHTO T-99). For the case that bedding material is not density testable, procedures in accordance with 00405.46(c) (2) shall be followed. In this case, the bedding materials should be compacted using suitable compaction equipment until non-yielding.

Bedding disturbed by pipe movement, by removal of shoring, or by movement of a trench box or shield shall be recompacted prior to backfill. Special care shall be taken to provide adequate bedding support at wye or tee connections, at Fernco connections and adjacent to other structures so as to avoid bending or shearing stresses at these critical points. The Contactor shall prevent pipe movement either horizontally or vertically during placement and compaction of pipe bedding material.

**00405.46(b) Pipe Zone** - Add the following to the subsection:

Pipe zone material shall be compacted to 95% of the Standard Proctor maximum dry density (ASTM D698, AASHTO T-99).

**00405.46(c)(1) General** - This subsection is modified as follows:

Delete second paragraph. Excavated material shall not be used for backfill material.

**00405.46(c)(2) Class A, B, C, or D Backfill** – Delete the second paragraph of the subsection and add the following:

Within rights of way and paved surfaces, trench backfill shall be compacted to 98% of the Standard Proctor maximum dry density within two feet of final pavement subgrade elevation and to 95% of the Standard Proctor maximum dry density below two feet of final pavement subgrade elevation. Water jetting is not acceptable as a method of compaction.

In-place compaction tests will be made by the Agency. Contractor shall remove and recompact material that does not meet specified requirements. The Agency will charge the Contractor for the time and expenses to re-test non-compliant trench backfill.

For materials where a compaction curve cannot be developed in accordance with ASTM D698 or AASHTO T-99, compaction and field verification procedures for non-testable soils in ODOT Section 00330.43(c) should be followed. Deflection testing is not required.

When the backfilling is complete, the Contractor shall finish the surface area as specified. In paved areas, the Contractor shall maintain the surface of the trench backfill level with the existing grade, until final pavement replacement is completed and accepted by the Agency.

Add the following at the end of the subsection:

When crossing below an existing natural gas pipeline main or service of any size, the Contractor shall provide and install sand drainage material conforming to 00360.10 to provide a 12-inch envelope in all directions around the existing gas piping.

**00405.48(c) Pavement, Curb and Sidewalk**

Add the following to the first paragraph, after the second sentence:

Saw cut to nearest joint, panel or as indicated in the Supplemental Drawings.

In second paragraph, delete "6 inches" and replace with "12 inches" and add the following:

The Contractor is responsible for any damage to the sawcut trench edges between the time of excavation and paving. Trenches excavated for paving may not be left open for more than one day without steel plates or backfilling.



#### **Section 00415 – Video Pipe Inspection**

**00415.40(c) Inspection** – Delete the last sentence of the first paragraph and replace with the following:  
Stop and inspect the full circumference of all pipe joints.

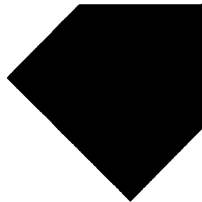
#### **Section 00440 – Commercial Grade Concrete**

**00440.14(a) General** - In last sentence, delete "a QCT" and replace with "Agency".

**00440.30 Quality Control Personnel** - Delete this subsection in its entirety.

#### **Section 00442 – Controlled Low Strength Materials**

**00442.00 Scope** - Controlled Low Strength Material shall be used to plug abandoned pipe and for the construction of trench dams.



## **Section 00445 – Sanitary, Storm, Culvert, Siphon, and Irrigation Pipe**

### **00445.11(e) Tracer Wire**

Delete the second sentence and replace with the following:

The HMW-PE insulated cover shall be 45 mil thick. Wire color in conformance with 00445.11(e).

### **00445.11(h) Sanitary Sewer Laterals – Add this subsection:**

Construct sanitary sewer laterals per the Supplemental Drawings. Tee's consisting of a PVC hub, rubber sleeve and stainless steel band are not acceptable.

### **00445.48 Tracer Wire - Add the following to the first paragraph:**

Run wires into cleanouts, manholes and other structures to a point accessible from the cover and not to impede access.

## **Section 00470 – Manholes, Catch Basins and Inlets**

### **00470.00 Scope – Add the following to subsection:**

This Work shall consist of installing storm sewer and sanitary sewer manholes.

Storm sewer manholes shall be constructed per the Supplemental Drawings.

Sanitary sewer manholes shall be constructed per Supplemental Drawings.

Catch basins shall be constructed per the Supplemental Drawings.

**00470.11 Precast Concrete Manholes and Bases –** Storm sewer manholes shall be core drilled in the field for catch basin lateral and interceptor drain connections.

**00470.71(b) Vacuum Testing -** This subsection shall also apply to storm drain manholes.

### **00470.72 Adjusting Manholes and Catch Basins to Grade – Add this subsection:**

Manhole structures and catch basins shall be set to grade of preliminary asphalt surface and adjusted to final grade of surface at the time of final asphalt paving.





## **Section 00490 – Work on Existing Sewers and Structures**

**00490.40 General** – Add the following to subsection:

Contractor shall be solely responsible for safety during the performance of the Work. No one shall enter into any sewer segment, or structure, where hazardous conditions may exist until such time as the source of these conditions is identified and eliminated by the Contractor and/or Agency. The Contractor shall perform all tests that may be required to identify and assess unsafe conditions and shall perform all work in accordance with the latest OSHA confined space entry regulations. Contractor will coordinate its work with local fire, police and emergency rescue units so they are aware of his working conditions. Access for cleaning purposes shall be via existing manhole openings.

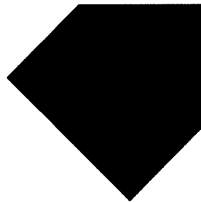
**00490.43 Abandoning Pipe in Place** – Replace subsection with “Abandoned pipes shall be completely filled with controlled low-strength material in accordance with Section 00442 and capped.”

**00490.50 Sanitary Sewer and Storm Drain Connections** – Add this subsection:

Connecting new sanitary sewer or storm drain pipe larger than 6-inch diameter to existing sanitary sewer or storm drain pipe shall be with a Romac 501 coupling, Romac Macro HP coupling or approved equal.

## **Section 00495 – Trench Resurfacing**

**00495.10 Materials** - Permanent trench surfacing materials in existing paved areas shall be Asphalt Concrete Pavement (ACP) to in accordance with Section 00744.



## PART 00600 – BASES

### Section 00641 – Aggregate Subbase, Base, and Shoulders

**00641.10(a) Base and Shoulder Aggregate** - After the second sentence, add the following:

Base aggregate shall consist of both leveling rock and base rock as shown on the Supplemental Drawings. Leveling rock and base rock shall conform to Section 02630.10 for 3/4"-0.

**00641.80(b) Volume Basis** – Remove "When measurement is by volume, quantities will be measured in the hauling vehicle." and replace with "When measurement is by volume, quantities will be in-place measure. Quantities will be limited to the Neat Lines shown or as verified by the engineer."

DRAFT



## PART 00700 – WEARING SURFACES

### Section 00744 – Asphalt Concrete Pavement

**00744.12(a) Mix Type** - Mix Type shall conform to 1/2" ACP.

**00744.13 Job Mix Formula Requirements** - JMF shall conform to Level 3.

**00744.16 Sampling and Testing** - Agency will provide sampling and testing including type and frequency of tests.

**00744.42 Tack Coat** - Delete the last sentence of the first paragraph and replace with the following:

Tack coat asphalt shall be approved by the Engineer prior to application.

**00744.43(c) Placing** - In last paragraph of subsection, delete the third sentence and replace with the following:

Where 4-inches of ACP is required for trench pavement patching or street section, place in two separate 2-inch lifts.

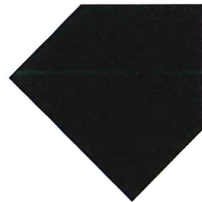
**00744.49 Compaction** - Agency will conduct compaction testing including determination of testing frequency.

### Section 00759 – Miscellaneous Portland Cement Concrete Structures

**00759.12 Sidewalk Ramp Treatment** - Detectable warning surfaces shall be cast in place, brick red.

**00759.41 Earthwork** - Excavation for curb shall be performed at the same time as excavation for roadway section, and shall extend to 1-foot beyond the back of curb.

**00759.42 Foundations** - Delete the words "using selected granular backfill material according to Section 00330 or".



## PART 00800 – PERMANENT TRAFFIC SAFETY AND GUIDANCE DEVICES

### Section 00850 – Common Provisions for Pavement Markings

**00850.50 General** – Add the following to subsection:

Temporary pavement markings shall be maintained in serviceable condition throughout the project until permanent pavement markings are installed. Temporary pavement markings that are damaged shall be repaired or replaced by the Contractor immediately at no additional cost to Agency.

**00850.75 Manufacturer's Warranty** – In the first sentence, delete "on Agency supplied warranty forms". Delete the last sentence.

### Section 00865 – Longitudinal Pavement Markings – Durable

**00865.00 Scope** – Add the following to subsection:

Continental style crosswalks shall be High Skid Resistant Pre-formed Thermoplastic.

Crosswalks with standard bars and diagonal striping shall be constructed with an Agency provided legend using white paint with reflective glass beads.

If any portion of a crosswalk marking is removed or damaged during construction, the entire crosswalk marking shall be replaced with thermoplastic or paint as noted on the Supplemental Drawings. All four sides of the crosswalk marking are to remain consistent.

### Section 00867 – Transverse Pavement Markings – Legends and Bars

**00867.45 Installation** - Type B-HS: Preformed, Fused Thermoplastic Film High Skid material shall apply to this project.

## PART 00900 - PERMANENT TRAFFIC CONTROL AND ILLUMINATION SYSTEMS

**00940.90 Payment** – Add the following to subsection:

(g) Signs with post, \_\_\_\_\_, \_\_\_\_\_ Lump Sum

Item (g) includes payment for sign posts as shown in the supplemental drawings.

In item (g), the type of sheeting will be inserted in the first blank; the type of material will be inserted in the second blank.



## PART 01000 – RIGHT OF WAY DEVELOPMENT AND CONTROL

### Section 01040 - Planting

**01040.00 Scope** – Add the following to this subsection:

All planting, including sod lawn installation, shall be completed by a professional/licensed landscape company.

**01040.55(k) Site Specific Restoration** – Add this subsection:

At any point of connections to private storm drain catch basins, storm drain lines, water or sewer services, or other facilities, restore the site of connection to existing conditions or better. Lawn sod shall be used for all grass restoration.

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## PART 01100 – WATER SUPPLY SYSTEMS

### Section 01140 – Potable Water Pipe and Fittings

**01140.10 Materials** – Modify this subsection as follows:

All water lines shall be ductile iron thickness Class 52 meeting the requirements of Section 02470.20 or as directed in the Supplemental Drawings.

All ductile iron pipe and fittings and all brass fittings shall be manufactured within the U.S.

**01140.40(a) Dewatering Trenches** – This section is supplemented with the following:

See subsection 00405.43 Dewatering for additional requirements.

**01140.41(a) General** – Add the following to subsection:

Pipe shall be installed with 30 inches minimum and 42 inches maximum cover from the top of the pipe to finished grade unless otherwise shown on the Supplemental Drawings or as approved by the Engineer.

**01140.41(c) Polyethylene Encasement** – Delete this subsection in its entirety.

**01140.43 Polyethylene Encasement** – Delete this subsection in its entirety.

**01140.44(b) Restrained Joints** – Delete the first sentence and replace with the following:

In addition to concrete thrust blocks as required in subsection 01140.44(a), mechanically restrain all joints at bends, tees, dead ends and crosses.

**01140.47(b) Permission** – Delete and replace with the following:

The Contractor shall notify the Agency at least 2 working days in advance of each requested shutdown. Shutdowns shall not be scheduled on Friday or the day before a holiday and shall be planned to take place early in the day. Shutdowns may also have to be scheduled during times other than normal working hours. To minimize the inconvenience to water customers, the Contractor shall plan carefully for the installation of the new pipe by exposing the existing pipe in advance and making sure to have all necessary fittings, tools, equipment and personnel to make the connection in as short a time period as possible. The Contractor shall notify the Agency of any changes to the schedule prior to customer notification. If the schedule is changed after Agency staff has spent time or resources preparing for the shutdown, the Contractor will reimburse the Agency for personnel and equipment time and other expenses. Reimbursement will not be required if circumstances beyond the control of the Contractor cause the schedule change.

**01140.51 Hydrostatic Testing** – Delete and replace with the following:

Hydrostatic Testing shall be performed in accordance with the most recent edition of AWWA C600

**01140.52 Disinfecting** – Delete and replace with the following:

Prior to placing new water mains in service, the Contractor shall disinfect new mains, and any repaired portions of, or extensions to, existing mains, and obtain two satisfactory bacteriological reports. Disinfection shall be performed in accordance with AWWA C651, or as directed by the Engineer. The first sample will be collected and bacteriological tests obtained by the Agency at its cost. The second sample shall be collected by the Contractor and the Contractor shall be responsible for having the bacteriological test conducted by a State of Oregon certified laboratory at the Contractor's cost. The Contractor shall notify the Engineer at least 24 hours in advance to schedule bacteriological testing.

No connections will be made to the existing water system until the Contractor has successfully passed specified pressure and bacteriological testing. Temporary piping, valves and connections may be required to maintain water service and complete testing. Contractor is responsible for detailing and providing all temporary piping, valves and connections required.



## **Section 01170 – Potable Water Service Connections, 2 inch and Smaller**

### **01170.40 General** – Add the following to subsection:

Connect to all water mains, including Class 52 ductile iron, using saddles. Direct taps are prohibited.

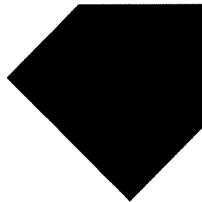
The existing water meters shall be left in the water meter box for the Agency to disconnect and reinstall if applicable. The Agency will perform the required documentation for updating property account information related to the water meter.

### **01170.40(b) Installation** – Add the following to subsection:

When copper tubing is used for service connections, the tubing shall only be bent by using a suitable copper tubing tool to bend. Any divots for bends found in the copper tubing upon installation will be unacceptable. The Contractor will replace the tubing at no additional charge to the Agency.

### **01170.41 Reconnecting Existing Services** – Add the following to subsection:

Where relocated/replaced water meter and service is shown on the drawings, the existing water service line, meter box, fittings, appurtenances and other miscellaneous materials shall be removed and disposed of by the Contractor.



## **PART 02000 – MATERIALS**

### **Section 02470 – Potable Water Pipe Materials**

**02470.20(a) General** - Delete the last sentence of the subsection and replace with the following:

Ductile iron pipe shall be Standard Thickness Class 52. All ductile iron pipe and fittings shall be manufactured within the United States.

### **Section 02475 - Potable Water Fitting Materials**

**02475.20 Ductile Iron Pipe Fittings** – Delete the first sentence and replace with the following:

All ductile iron fittings shall meet the requirements of AWWA C153.

### **Section 02485 – Hydrant and Appurtenance Materials**

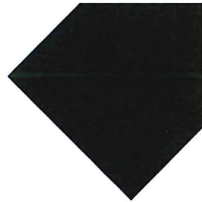
**02485.10 Fire Hydrants** – Add the following to subsection:

Gate valves on the hydrant assembly as shown in the Supplemental Drawings are considered incidental to the hydrant and no additional payment will be made. The fire hydrant tee shall be flanged or mechanical joint as shown on the Supplemental Drawings.

### **Section 02490 – Potable Water Service Connection Materials, 2 Inch and Smaller**

**02490.70 Meter Boxes** - Delete subsections (a) and (b) and replace with the following:

Meter boxes shall be in conformance with the Supplemental Drawings.







## AGENDA MEMORANDUM

**TO:** The Honorable Mayor and Warrenton City Commission  
**FROM:** Linda Engbretson, City Manager  
**DATE:** For the Agenda of July 28, 2020  
**SUBJ:** **Consideration of Emergency Declaration Extension**

### SUMMARY

The attached Resolution extends the current Emergency Declaration to coincide with the county's extension and the state, until September 4.

### RECOMMENDATION/SUGGESTED MOTION

*"I move to adopt Resolution No. 2574, A Resolution of the Warrenton City Commission Extending the State of Emergency Because of the COVID-19 Outbreak."*

### ALTERNATIVE

Other action as determined by the City Commission.

### FISCAL IMPACT

N/A

## RESOLUTION NO. 2574

### A RESOLUTION OF THE WARRENTON CITY COMMISSION EXTENDING THE STATE OF EMERGENCY BECAUSE OF THE COVID-19 OUTBREAK.

WHEREAS, Coronaviruses are a group of viruses that can cause respiratory disease, with the potential to cause serious illness or loss of life, and the novel coronavirus COVID-19 has been found to carry particular risks for certain groups of people; and

WHEREAS, on March 8, 2020, Governor Brown declared a state of emergency due to the COVID-19 outbreak in Oregon, finding that COVID-19 has created a threat to public health and safety, and constitutes a statewide emergency; and

WHEREAS, COVID-19 was declared a pandemic by the World Health Organization on March 11, 2020; and

WHEREAS, On March 13, 2020, President Trump declared a national emergency due to the proliferation of COVID-19 outbreaks throughout the United States; and

WHEREAS, the City Commission found conditions required the need for the City to exercise its authority to declare a State of Emergency; and

WHEREAS, the City Commission originally Declared a State of Emergency on March 21, 2020; and

WHEREAS, the State of Emergency has been extended and is currently set to remain in effect until July 29, 2020; and

WHEREAS, based on ongoing circumstances related to handling the COVID-19 outbreak, the City Commission finds it necessary to yet again extend the State of Emergency beyond July 28, 2020;

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

**Section 1:** A local state of emergency declared to exist throughout the City of Warrenton via Resolution No. 2564 (the "Emergency Declaration") remains in effect.

**Section 2:** Based on the unknown duration of the COVID-19 outbreak, and the City's ongoing efforts to address it, the Emergency Declaration shall remain in effect until September 4, 2020.

**Section 3:** The City Manager's authorization to close any and all City buildings and facilities to the public, as appropriate, to minimize and slow the spread of COVID-19, and exercise all other powers vested in the City Manager under ORS Chapter 401 and the EOP, is extended through September 4, 2020. The City Manager's authorization to



request assistance, funds, and reimbursement from the State of Oregon and federal agencies; adopt temporary rules and policies regarding City facilities, funds, resources, and staff; and enter into contracts for services or aid agreements with other governmental or private entities is extended through September 4, 2020.

**Section 4.** This Resolution is and shall be effective from and after its enactment by the City Commission.

ADOPTED by the City Commission of the City of Warrenton this 28th day of July, 2020.

APPROVED:

\_\_\_\_\_  
Henry Balensifer III, Mayor

ATTEST:

\_\_\_\_\_  
Dawne Shaw, City Recorder

# OREGON DEPARTMENT OF TRANSPORTATION

HWY 101 – HWY 104 – Perkins Lane

HWY 104 is also known as Fort Stevens Highway



# Web Maps View



# HWY 101 at the intersection of HWY 104 and Perkins Lane





# HWY 101 – North bound approaching HWY 104 and Perkins Lane intersection



# HWY 101 – South bound approaching HWY 104 and Perkins Lane intersection





# HWY 104 – Looking across HWY 101 to Perkins Lane



# Perkins Lane– Looking across HWY 101 to HWY 104





# HWY 101 - Approaching Dolphin Road intersection

North Bound



South Bound



# City of Warrenton Concerns:

- Design doesn't show existing water and sewer lines
- Lighting at the intersection north/south approaches is warranted
- Plan should include numerous signs warning drivers of access changes
- Concrete median should be mountable for fire and life safety vehicles
- Concerns with additional traffic use on Dolphin
- Concerns with additional traffic use on SE Ensign Ln., HWY 104 Spur, and existing Skipanon bridge on HWY 104 Spur





June 5, 2020

Dear Chief Administrative Official:

For the past three months, seven policy committees have been working to identify and propose specific actions as part of the LOC's effort to develop a pro-active legislative agenda for the 2021 session. They have identified legislative objectives as set forth in the enclosed ballot and legislative recommendation materials. These objectives span a variety of issues and differ in the potential resources required to seek their achievement. Therefore, it is desirable to prioritize them in order to ensure that efforts are focused where they are most needed.

While the attached ballot reflects the top policies developed in each of the policy committees, each undertook a broad look at a range of issues impacting cities. Many issues reflect the LOC's ongoing mission to support cities' work and their home rule authority to develop and use a variety of tools to meet the needs of residents. Each city is being asked to review the recommendations of the policy committees and provide input to the LOC Board of Directors as it prepares to adopt the LOC's 2021 legislative agenda. After your city council has had the opportunity to review the proposals and discuss them with your staff, please return the enclosed ballot indicating the top four issues that your city council would like to see the LOC focus on during the 2021 session. **The deadline for response is August 7, 2020.** The board of directors will then review the results of this survey of member cities, along with the recommendations of the policy committees, and determine the LOC's 2021 legislative agenda.

Your city's participation and input will assist the board in creating a focused set of specific legislative targets that reflect the issues of greatest importance to cities. If you have individual questions about the ballot topics do not hesitate to reach out to committee members who serve on the seven policy committees. Thank you for your involvement, and thanks to those among you who gave many hours of time and expertise in developing these proposals.

Do not hesitate to contact me or Jim McCauley, Legislative Director, with additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Cully', written over a horizontal line.

Mike Cully  
Executive Director

A handwritten signature in blue ink, appearing to read 'Jim McCauley', written over a horizontal line.

Jim McCauley  
Legislative Director

## INSTRUCTIONS

Each city should submit one form that reflects the consensus opinion of its city council on the **top four** legislative priorities for 2021. Here are the ways to submit your ballot. **Ballots in any form must be submitted by August 7, 2020.**

1. Fill out the online survey that has been sent to your city's chief administrative official; or
2. Fill out the attached hard copy form and return it to the LOC at the address or fax number provided below. Simply place an **X or check mark** in the space to the right of the city's top four legislative proposals. The top four do not need to be prioritized.

Return hard copy ballots to:

Jenna Jones  
League of Oregon Cities  
1201 Court St. NE, Suite 200  
Salem, OR 97301  
Fax – (503) 399-4863  
[jjones@orcities.org](mailto:jjones@orcities.org)

**Thank you for your participation.**



City of: \_\_\_\_\_

Please mark 4 boxes with an X or check mark that reflects the top 4 issues that your city recommends be added to the priorities for the LOC's 2021 legislative agenda.

## Legislation

A. Beer and Cider Tax Increase	
B. Broadband Infrastructure and Technical Assistance Funding	
C. Building (Reach) Code – Energy Efficiency Local Option	
D. COVID-19 Economic Recovery Investments	
E. Digital Equity and Inclusion	
F. Expedited Siting for Shelter and Affordable Housing	
G. Green Energy/Renewables – Expanded Local Option	
H. Housing and Services Investment	
I. Increased Budgetary Flexibility During Budgetary Emergency	
J. Infrastructure Financing and Resilience	
K. Local Climate Action Planning Resources	
L. Local Energy Generation Project Support	
M. Local Speed Setting Authority	
N. Long Term Transportation Infrastructure Funding	
O. Low-Income Energy Efficiency and Affordability Programs	
P. Marijuana Tax Local Rate Limitation Increase	
Q. Mental Health Service Delivery	
R. Municipal Broadband and Municipal Pole Protection	
S. New Mobility Services	
T. Photo Enforcement Safety Cameras	
U. Property Tax Reform	
V. Reducing Wastewater Impacts from Wipes and Other “Non-Flushables”	
W. Right-of-way/Franchise Fees Authority Preservation	
X. State Highway Funds Formula	
Y. Tort Liability Reform	
Z. Water Utility Rate and Fund Assistance	

In addition to your ranking of the priorities shown above, please use this space to provide us with any comments (supportive or critical) you may have on these issues, or thoughts on issues or potential legislative initiatives that have been overlooked during the committee process.):

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**You are reviewing the hard copy of the ballot. There are hyperlinks in the digital copy that may provide more background information. You can find the digital version with hyperlinks by going to this web address: [https://www.orcities.org/download\\_file/1038/0](https://www.orcities.org/download_file/1038/0). It is best opened in Google Chrome.**

#### **A. Beer and Cider Tax Increase**

**Legislation:**

The League proposes increasing the state taxes on beer and cider to assist with rising public safety costs, improve public health, reduce alcohol consumption by minors, and provide alcohol tax equity with wine and liquor.

**Background:**

Oregon's tax has not been increased since 1978 and is currently \$2.60 per barrel which equates to about 8 cents on a gallon of beer. The tax is by volume and not on the sales price, meaning the tax is less than 5 cents on a six-pack. Oregon has the lowest beer tax in the country, and to get to the middle of the states Oregon would need to raise the tax to \$30.00 per barrel or 54 cents per six pack (a more than 10-fold increase). Given recent challenges to the craft brewing industry tied to bar and restaurant closures it may be appropriate to delay or phase-in the increase. Cities are preempted from imposing alcohol taxes. In exchange, cities receive approximately 34% of the state alcohol revenues, but the state takes 50% of beer and wine taxes off the top prior to this distribution. Cities have significant public safety costs related to alcohol consumption, and the beer tax does not come close to covering its fair share of these costs.

*Presented by the Finance and Taxation Committee*

#### **B. Broadband Infrastructure and Technical Assistance Funding**

**Legislation:**

Seek additional state support and funding for increased broadband infrastructure deployment and technical assistance.

**Background:**

The deployment of broadband and telecommunications networks and services (public and/or private) throughout Oregon is critical to economic development, education, health and safety and the ability of residents to be linked to their governments. Research shows areas of the state either not served or underserved by competitive broadband technology. A significant barrier to the deployment of broadband infrastructure is funding. Cities need additional funding and support from various sources, including the state and federal government, allocated for increased or new, reliable, low latency broadband infrastructure that reaches speeds of at least 25 Mbps download and 3 Mbps upload or any updated speed standards as adopted by the FCC. Many federal grant programs require localities to have a broadband strategic plan in place before they are eligible for funds. Therefore, there is a need for funding sources to help cities with technical assistance as well as infrastructure.

*Presented by the Telecom, Broadband & Cable Committee*

#### **C. Building (Reach) Code – Energy Efficiency Local Option**

**Legislation:**

The LOC will pursue/support legislation to allow communities to adopt the Reach Code as the mandatory residential or commercial building code within the city's jurisdictional boundaries. The Reach Code would represent a building energy code that would be at least 10 percent more efficient than the statewide building code. Under this proposal, cities would be able to adopt the more efficient Reach Code or would continue to use the standard statewide building code as the base code.



**Background:**

Under current state law, cities are preempted from adopting local building codes. Instead, development is subject to statewide codes, including for new residential and commercial development. In 2009, legislation was passed to implement a new, optional code (Reach Code) that would allow developers to exceed statewide codes and streamline the construction of higher-performance buildings through efficiencies gained in the building exterior envelope as well as heating, ventilation, air conditioning, piping insulation and lighting. The Reach Code is optional for builders to use, but a local government can't mandate a builder to use it. This legislative recommendation would allow a city to adopt the Reach Code within their jurisdiction in order to promote additional energy efficiency for new residential and commercial structures. If a city does not wish to adopt the Reach Code, the statewide code would remain in place. The LOC Energy & Environment Committee discussed whether this recommendation would impact housing costs and believes that long-term cost savings may be gained through increased energy efficiency in newly built units. Ultimately, the decision on whether to utilize the standard code or the enhanced (Reach) code would be at the discretion of the city.

*Presented by the Energy and Environment Committee*

**D. COVID-10 Economic Recovery Investments****Legislation:**

The League will advocate for continued economic recovery strategies and investments for small business and workforce assistance in response to the economic impacts of the COVID-19 pandemic.

**Background:**

The COVID-19 pandemic has had a devastating impact on Oregon's small businesses and workforce. While the federal government and the state have made recent investments to support small business, these resources have yet to meet current needs and more resources will be needed to support long term economic recovery for Oregon's communities. The League will work in coordination with economic development partners to advocate for continued investments to support long-term recovery and economic development.

*Presented by the Community Development Committee*

**E. Digital Equity and Inclusion****Legislation:**

Support legislation and policies that are inclusive and equitable to all, individuals and communities, so that they have the information technology capacity needed for full participation in our society, democracy and economy.

**Background:**

Connectivity is crucial to modern life. It is being relied on more for how people do business, learn, and receive important services like healthcare. As technology has evolved, the digital divide has become more complex and nuanced. It is no longer about the existence of technology in certain places. Now, the discussion of the digital divide is framed in terms of whether a population has access to hardware, to the Internet, to viable connection speeds and to the skills and training they need to effectively use it. The LOC will partner with schools, healthcare, and other stakeholders to ensure technologies are relevant, available, affordable, and accessible to the diverse populous and communities of Oregon. Additionally, the LOC will advocate for digital literacy programs to help learn these new technologies.

*Presented by the Telecom, Broadband & Cable Committee*

## **F. Expedited Siting for Shelter and Affordable Housing**

### **Legislation:**

The League will pursue legislation to expedite the siting of emergency shelter and other affordable housing that follows the intent of the 2020 shelter siting bill (HB 4001) but retains more local decision making in the process. The League will pursue this priority in coordination with affordable housing partners and other land use stakeholders.

### **Background:**

The League worked closely with city and county partners during the 2020 session to gain improvements to HB 4001, which sought to preempt all local siting and zoning regulations and the land use appeals process, for approving the siting of emergency shelters for a one-year period. HB 4001 received strong legislative support in 2020. Draft omnibus legislation for a potential future special session has included the text of HB 4001 and the League expects to see HB 4001 reintroduced in the 2021 session.

This priority will empower cities and counties to proactively introduce alternative legislation, similar to existing statute in California, which requires jurisdictions to identify places where shelters can locate instead of mandating that jurisdictions allow shelters to be sited anywhere. The California model requires cities and counties to accommodate their need for emergency shelters on sites where the use is allowed without a conditional use permit and requires cities and counties to treat transitional and supportive housing projects as a residential use of property.

*Presented by the Community Development Committee*

## **G. Green Energy/Renewables – Expanded Local Option**

### **Legislation:**

The LOC will pursue/support policies that increase local control opportunities for cities that want to establish a community-scale green energy program. This program would be optional for cities that choose to pursue it. Cities who choose to, would be allowed to adopt resolutions that would opt-in residential, commercial, and industrial customers to a voluntary renewable energy option if it is provided by an investor owned utility that serves the city and its electric customers. Under this proposed program, a city would be able to pursue a more aggressive green energy portfolio and would better position cities to meet local climate action goals.

### **Background:**

Under current law, customers of investor-owned utilities can opt-in to voluntary renewable energy options for their customers. These options allow customers to invest in additional green energy generation. In 2019, the state of Utah passed legislation (SB 411) that allows cities and counties to opt-in to programs on a community-scale basis, while still allowing individual customers to opt-out. Under this proposal, any city within the territory of an investor-owned utility, would be able to pursue this option for community-scale renewable energy (net-100% renewable).

*Presented by the Energy and Environment Committee*

## **H. Housing and Services Investment**

### **Legislation:**

The League will support increased investments for affordable housing, homeless assistance, and related services including funding for: shelter, homeless services, case management, rent assistance, the development and preservation of affordable housing, and permanent supportive housing.



**Background:**

Cities large and small were facing escalating homelessness rates before the COVID-19 pandemic and the current economic downturn will only increase the number of Oregonians facing eviction or experiencing homelessness. State general fund programs like the Emergency Housing Assistance (EHA) and State Homeless Assistance Program (SHAP) have seen record investments in previous legislative sessions. The legislative emergency board also voted recently to dedicate \$12M in general funds to support rent assistance and safe shelter in response to COVID-19.

Oregon's lack of available housing, high rents and high home prices are causing housing instability and homelessness to increase. The Legislature has made record investments in recent years to fund the LIFT affordable housing program and preserve Oregon's existing affordable housing infrastructure. These programs are funded through general obligation bonds and lottery backed bonds.

Permanent Supportive Housing is a key strategy for ending chronic homelessness that reduces downstream costs to public systems like public safety, emergency health care and corrections. The 2019 Legislature invested over \$50M to stand up a three-pronged permanent supportive housing program that includes 1) development costs to build, 2) rent assistance to keep units deeply affordable, and 3) wrap around services that are key to ensuring residents' long-term stability. The state should continue investing in this model to bring more Permanent Supportive Housing across the state and ensure that the housing developed with the original \$50M continues receive the necessary ongoing funding for rent assistance and supportive services.

*Presented by the Community Development Committee*

**I. Increased Budgetary Flexibility During Budgetary Emergency****Legislation:**

The League proposes relaxing budgetary constraints in state law so that cities may better be able to withstand revenue losses related to natural disasters and public health emergencies. These losses will inevitably force many cities to cut services and lay off staff, the legislature can reduce the effect of losses by increasing flexibility for use of funds during and after a declared emergency.

**Background:**

Cities anticipate a tremendous loss in revenue due to the COVID-19 pandemic. Reduced revenues already include losses to lodging taxes, gas taxes, park fees, development fees, parking fees, utility charges, and so on. Further out, there is widespread concern that there will be impacts to the real estate market going into 2021, and by extension a reduction in 2021-22 property tax revenues. Cities want maximum flexibility in using funds that are subject to statutory limitations but will negotiate terms on individual funding sources including payback requirements if necessary. This flexibility should apply during and after declared emergencies, including both the current pandemic and future natural disasters.

*Presented by the Finance and Taxation Committee*

**J. Infrastructure Financing and Resilience****Legislation:**

The League will advocate for an increase in the state's investment in key infrastructure funding sources, including, but not limited to, the Special Public Works Fund (SPWF), Brownfield Redevelopment Fund, and Regionally Significant Industrial Site loan program. The advocacy will include seeking an investment and set aside through the SPWF for seismic resilience planning and related infrastructure improvements to make Oregon water and wastewater systems more resilient.

**Background:**

Cities continue to face the challenge of how to fund infrastructure improvements (both to maintain current and to build new). Increasing state resources in programs that provide access to lower rate loans and grants will assist cities in investing in vital infrastructure. Infrastructure development impacts economic development, housing, and livability. The level of funding for these programs has been inadequate compared to the needs over the last few biennia and the funds are depleting and unsustainable without significant program modifications and reinvestments. This priority will focus on maximizing both the amount of funding and the flexibility of the funds to meet the needs of more cities across the state to ensure long-term infrastructure investment.

*Presented by the Community Development Committee*

**K. Local Climate Action Planning Resources****Legislation:**

The LOC will seek grant funding and technical assistance resources for cities to pursue, adopt or expand local climate action plans. In addition, the LOC will pursue opportunities to work with the Oregon Climate Change Research Institute (through Oregon State University) to provide cities and counties with local/regional data that can better inform the adoption and implementation of climate adaptation and mitigation at the local level.

**Background:**

According to the Oregon Department of Energy's 2018 Biennial Energy Report (BER), since the early 1990s, major international and U.S. scientific assessments have concluded that both climate change mitigation and adaptation efforts are necessary in response to climate change. The BER goes on to explain that adaptation is often thought of as actions "to prepare for and adjust to new conditions, thereby reducing harm or taking advantage of new opportunities or simply to reduce society's vulnerability to climate change impacts." Local climate action plans, adopted by cities or counties, can help communities better understand how climate change will impact their communities, and can provide localized solutions to help mitigate against the impacts of climate change. The LOC is aware of fourteen cities that have adopted local climate action plans. There are other cities that are interested in doing the same but that do not have the financial and/or staffing resources that are necessary.

*Presented by the Energy and Environment Committee*

**L. Local Energy Generation Project Support****Legislation:**

The LOC will support/pursue funding, technical assistance and other tools that make local energy generation more feasible for cities to pursue.

**Background:**

Local energy generation projects can better position cities to pursue and achieve local climate action goals, address capacity constraints of existing electric transmission lines, and can help cities respond to individual businesses that may be seeking green energy options. The types of local energy generation projects discussed by the committee include, but are not limited to, small-scale hydropower, in-conduit hydropower, methane capture, biomass and solar. Such projects are not intended to conflict with existing low-carbon power purchase agreements but can position cities to pursue local climate action goals and supplement energy needs through renewable generation. Under this recommendation, the LOC will work to identify barriers and potential solutions to local energy generation and will pursue funding assistance for feasibility studies and project implementation.

*Presented by the Energy and Environment Committee*



## **M. Local Speed Setting Authority**

### **Legislation:**

Support legislation that provides legislative authority for ODOT to delegate local speed setting authority to Oregon cities that meet state criteria. I Improve safety and speed limit consistency in Oregon cities by establishing a clear delegation process that is consistent with recently adopted statewide speed zone rules. (OAR 734-020-0014, 734-020-0015, and 734-020-0016). This will be permissive legislation allowing cities to opt-in and thus will not be a mandate.

### **Background:**

The state of Oregon and cities across the state are all committed to improving safety on our streets. National and international research has shown that setting appropriate speed limits on city streets is a critical tool for improving safety and saving lives. During the 2020 legislative session, HB 4103 gained widespread support for setting up a collaborative process with ODOT and cities that opt into a process for gaining local speed setting authority. Despite strong support, HB 4103 did not pass due to the legislative clock running out. Going forward, LOC will work with safety advocates and cities and use HB 4103 from the 2020 session as a template for legislation in 2021. Delegated authority should be made available to all cities that meet ODOT's criteria; participation by cities is permissive (not required). Cities should be able to determine speeds that are adequate and safe for their communities, working within the OAR speed zone framework. This will improve safety and make speed setting more consistent across local government jurisdictions.

*Presented by the Transportation Committee*

## **N. Long Term Transportation Infrastructure Funding**

### **Legislation:**

Support expansion and consideration of revenue-generating options to fund multimodal transportation infrastructure, which includes state and local facilities. Support state and local projects that are part of the Statewide Transportation Improvement Program.

### **Background:**

Oregon has made two significant state-wide transportation investments in the last 15 years. In 2009 the Jobs and Transportation Act (JTA). This was a successful effort from local governments and the business community to invest in maintenance and capacity building projects state-wide. In 2017, HB 2017 established Oregon's first ever comprehensive, multimodal, transportation investment with what is known as "Keep Oregon Moving," which was a \$5.3 billion package. Although HB 2017 will not have its full funding until 2024 LOC and other transportation advocates will need to constantly explore other sources of revenue including a possible future replacement of Oregon's gas tax with a road user charge system. Oregon has been pioneering a vehicle miles traveled (VMT) tax within the MyOReGo pilot program. The program is voluntary and can provide several benefits to users. Ultimately the long-term structure for transportation investment may well take on a similar structure.

*Presented by the Transportation Committee, endorsed by the Community Development Committee*

## **O. Low-Income Energy Efficiency and Affordability Programs**

### **Legislation:**

The LOC will provide support for programs that seek to expand upon low-income energy and heating assistance programs, including programs targeted to make energy more affordable for rental properties. In addition, the LOC will work to support programs that provide for energy bill payment assistance and expand opportunities for low-income Oregonians to access resources for home weatherization.

**Background:**

According to Oregon Housing & Community Services, approximately 396,182, or about 25 percent of all households, are considered energy-burdened because of their energy-related expenditures (as of 2018). A household is considered energy burdened if six percent or more of its gross income is consumed by energy-related expenses. In recent years, legislation has been introduced in Oregon that would have provided additional assistance to low-income homeowners and renters that struggle with energy affordability. Unfortunately, legislation did not pass. The need for such assistance has increased as a result of the economic hardships resulting from COVID-19. In addition to bill payment assistance, there is a need for programs that will support low-income home weatherization in order to make energy bills more affordable in the long-term.

*Presented by the Energy and Environment Committee*

**P. Marijuana Tax Local Rate Limitation Increase****Legislation:**

The League proposes increasing the current 3% cap on local marijuana taxes. This would give local voters greater choice in choosing a rate that reflects their needs or their community.

**Background:**

Retailers licensed by the Oregon Liquor Control Commission (OLCC) are required to charge a state-imposed retail sales tax of 17 percent for all recreational marijuana sold. Cities and counties (unincorporated areas only) may also impose a local retail sales tax of up to 3%, subject to voter approval. Tax rates for recreational marijuana vary widely across the states, but the total Oregon tax burden at a maximum of 20% is the lowest of West Coast states. Washington imposes a 37% state excise tax, but with a state sales tax of 6.5% and local rates of up to 1.9% the total rate can reach over 45%. California has a retail tax of only 15%, but with a state sales tax of 7.5% and local taxes up to 15.25% the total rate can reach up to 37.75%. Oregon consistently ranks among the lowest of the states for marijuana prices. Cities are sensitive to the desire to not push consumers to the black market and will work with the legislature on an increased cap that balances that concern with local revenue needs.

*Presented the Finance and Tax Committee*

**Q. Mental Health Service Delivery****Legislation:**

Support the delivery of mental health services in order to reduce negative police interactions and ensure that those in need receive the help they require.

**Background:**

The Committee and the LOC membership have prioritized the delivery of mental health services periodically over the last 5 years. Items contained in this priority have included crisis intervention training for police officer, mobile police and social worker teams to proactively work with people in danger of going into crisis, jail diversion, mental health courts and greater access to care. In the immediate past short session, the LOC worked with its coalition partners to obtain \$9 million in additional funding for aid-and-assist, community care and jail diversion but was unsuccessful due to a lack of quorum.

While the measurements are subjective and not in general agreement, most surveys of behavioral health and alcohol and drug addiction service availability place Oregon near or at the bottom of state rankings. As a result, Oregon ranks third in the nation for alcohol related deaths, and above the national average in suicides. Anecdotally, most police chiefs that have participated in LOC conversations on this topic report a growing number of calls for service stemming from people in mental health crisis. The COVID-19 pandemic has exacerbated some of these issues with Portland Police Bureau reporting a 41% increase in suicide related calls (including attempts and threats) over this time last year. This priority would include but not be limited to:



Investment: The stark truth is that Oregon has never financially supported mental health services at a level commensurate with need. More beds and more capacity will allow for greater delivery. The spending plan may be complicated but many advocates bristle at the idea of “mental health reform” when it’s never been funded as a priority. The League does not have a specific number at this time but is in conversation with partners to develop one.

Decimalization of Mental Illness: People suffering from mental illness that interact with the criminal justice system typically spend more time incarcerated and suffer a disruption in treatment. Jail diversion has been something the League has advocated for in previous sessions and but will require changes in law, training and investments.

Workgroups Outcomes: There are currently several workgroups developing behavioral health reform plans that have yet to be completed, much of that work has been interrupted by COVID 19. LOC staff can update the Committee on these their work continues but cannot make recommendations on them now.

Alcohol Availability: The prevalence of cheap and potent alcoholic beverages that are produced and sold for the express purpose of achieving rapid intoxication has been a concern for Oregon Recovers, an advocacy group for those recovering from addiction. OLCC sells several 750 ml bottles for under \$10 and some as low as \$5. Creating a minimum price per international unit of alcohol has had an impact on consumption of cheap, potent beverages in Scotland and is believed to have had an impact on consumption there. Raising the price of low cost but high-volume products would also increase city shared revenue and provide additional funding for behavioral health services.

Mental Health Parity: Oregon and the federal government have enacted statutes to ensure that mental health services are treated as a health issues in a manner identical to physical health by health insurers. The legislative intent behind these laws has not been met as evidence by reports of denied coverage. Ensuring effective parity would increase treatment an access.

*Presented by the General Government/Human Resources Committee, endorsed by the Community Development Committee*

## **R. Municipal Broadband and Pole Protection**

### **Legislation:**

Oppose legislative efforts to restrict existing municipal authority to provide broadband services, and own and operate poles in the rights-of-way.

### **Background:**

As the public grows more dependent on the Internet for expanding parts of their lives, community choices for gaining access at a reasonable price, for both consumers and producers, are dwindling. Some municipalities choose to become service providers themselves. Municipal broadband is sometimes the only way to bring high speed internet to a community and it can serve as an access point to neighboring communities. Additionally, municipal broadband adds competition to the market and can help lower prices for community members. As there is a push for more connectivity and bridging the digital the divide, the LOC will protect localities rights to be internet service providers for their own communities. Additionally, as more and more small cell and 5G technology is deployed in the rights-of-way, the LOC will protect the right of municipalities to own, operate and regulate attachments that are allowed on their poles.

*Presented by the Telecom, Broadband & Cable Committee*

## **S. New Mobility Services**

### **Legislation:**

Support for a variety of new mobility services that promote a safe, sustainable, and equitable multimodal transportation system, while preserving local government's authority to regulate services and ensure they best serve the local context.

### **Background:**

Transportation mobility has been rapidly changing over the last few years. The emergence of ridesharing services such as Transportation Network Companies (TNCs) now provide the public with more options to get from point "a" to point "b." New platforms continue to emerge such as scooters, shared bikes, electric delivery tricycles for package delivery and the possibility of future driverless delivery and vehicle fleets. Cities must have the flexibility to address the impacts of emerging technologies on their communities such as increased congestion and air pollution while protecting consumers and maintaining a safe transportation network that recognizes the unique needs of individual communities.

*Presented by the Transportation Committee*

## **T. Photo Enforcement Safety Cameras**

### **Legislation:**

Support continuation and expansion of fixed speed and red-light cameras and mobile speed radar state-wide to improve public safety in high-crash corridors. Explore changes that enable more streamlined processing of citations. Allow for local governments to form IGA's with other local governments to facilitate the use of safety cameras and mobile radar in their communities.

### **Background:**

The Oregon Transportation Safety Action Plan sets a goal of no deaths or life-changing injuries on Oregon's transportation system by 2035. In 2015, the Oregon Legislature granted the city of Portland the authority to implement a fixed speed safety camera program (HB 2621). Portland's fixed speed camera systems have been operating on "urban high crash corridors" for the past several years. Data collected at these locations shows a distinct change in driver behavior that has reduced the risk of collisions (See PBOT Report). Under existing statutes, photo radar is allowed in the cities of Albany, Beaverton, Bend, Eugene, Gladstone, Medford, Milwaukie, Oregon City, Portland and Tigard. LOC's goal is to bring this authority state-wide providing all cities with the choice of operating speed radar in their communities to improve safety and reduce the risk of high-speed crashes.

*Presented by the Transportation Committee*

## **U. Property Tax Reform**

### **Legislation:**

The League of Oregon Cities proposes that the Legislature refer a constitutional measure and take statutory action to reform the property tax system as part of the 2021 session. With the passage of the Corporate Activities Tax Oregon has taken a step towards long term financial stability at the state and school district level, but local budgetary challenges persist and the legislature must take action to allow cities and other local governments to adequately fund the services that residents demand.

### **Background:**

The property tax system is broken and in need of repair due to Measures 5 and 50, which are both now over 20 years old. The current system is inequitable to property owners and jurisdictions alike, is often inadequate to allow jurisdictions to provide critical services, removes all local choice, and is incomprehensible to the majority of taxpayers. Local governments and schools rely heavily on property tax revenues to pay for services and capital expenses. Therefore, the League will take a leadership role in forming coalitions to help draft and advocate for



both comprehensive and incremental property tax reform option packages. The League will remain flexible to support all legislation that improves the system, with a focus on a property tax package that includes, but may not be limited to these elements:

- To restore local choice, a system that allows voters to adopt tax levies and establish tax rates outside of current limits and not subject to compression (requires constitutional referral).
- To achieve equity, a system that has taxpayers' relative share tied to the value of their property, rather than the complex and increasingly arbitrary valuation system based on assessed value from Measure 50 (requires constitutional referral).
- To enhance fairness and adequacy, a system that makes various statutory changes, some of which would adjust the impact of the above changes. For example, as a part of comprehensive reform the League supports a new reasonable homestead exemption (percentage of RMV with a cap) but also supports limiting or repealing various property tax exemptions that do not have a reasonable return on investment.

*Presented by the Finance and Tax Committee, endorsed by the Community Development Committee*

## **V. Reducing Wastewater Impacts from Wipes and Other “Non-Flushables”**

### **Legislation:**

The LOC will work with other stakeholders, including the Oregon Association of Clean Water Agencies address challenges resulting from wipes and other non-flushable items. Legislation pursued will likely focus on requirements for manufacturers to clearly label product packaging to indicate that the product should not be flushed, however, the LOC will additionally explore other viable opportunities to address the public health, environmental and economic challenges resulting from improper disposal of these products.

### **Background:**

In recent years, public wastewater systems have experienced significant increases in sewer line clogs, environmental impacts, infrastructure impacts and costs associated with wipes being flushed down toilets. Most wipes don't break down when flushed, and even wipes that are labeled as “flushable” can clog pipelines and pumps and can cause sewage overflows in residences and the environment. The COVID-19 pandemic has made this challenge even worse due to shortages of toilet paper and increased use of disinfecting wipes. The EPA and other national organizations, as well as statewide and local wastewater agencies, are working to get the message out to avoid costly as well as environmental impacts of wipes in our sewer and treatment systems. In March of 2020, the state of Washington passed legislation requiring manufacturers to label products with a “do not flush” logo if the product does not meet national “flushability” standards (i.e. breaking down in the sewer system).

*Presented by the Water/Wastewater Committee*

## **W. Right-of-Way/Franchise Fees Authority Preservation**

### **Legislation:**

Oppose legislation that, in any way, preempts local authority to manage public rights-of-way and cities' ability to set the rate of compensation for the use of such rights-of-way.

### **Background:**

In its commitment to the protection of Home Rule and local control, the LOC consistently opposes restrictions on the rights of cities to manage their own affairs. From time to time, in the context of public rights-of-way management authority discussions, legislative proposals to restrict this authority arise. Efforts to restrict local authority often include proposals for a statewide right-of-way access policy and compensation system as well as limiting the ability of cities to charge fees of other government entities. This is contrary to local government management authority; the ability to enter into agreements with users of the right-of-way either by agreement/contract or ordinance; to set terms of right-of-way use and to set the rate of compensation. In recent

years the FCC has passed rulemaking through various orders like the Small Cell Orders (FCC 18-133 and FCC 18-111) and the Cable Franchising Order (FCC 19-80) that erode cities' right-of-way and franchising authority. Local governments around the U.S. are fighting these orders in court. There is a fear that the language of these orders will be codified in state legislatures. This would mean if the orders are overturned in court at the federal level, they will still impact cities in states that have passed laws codifying the orders.

*Presented by the Telecom, Broadband & Cable Committee*

## **X. State Highway Funds Formula**

### **Legislation:**

Consider opening the state highway fund distribution formula to allow for an additional percentage to cities. Currently the split is 50-30-20 with the State receiving 50%, Counties receiving 30% and the balance going to Cities 20%.

### **Background:**

Oregon has had a distribution formula for the state highway fund for decades. This fund combines the revenues generated from the state's gas tax, weight-mile tax on heavy trucks, licenses, fees, and bond proceeds. Approximately 77 percent of the total revenue collected by Oregon Department of Transportation (ODOT) is from state sources, while only 23 percent comes from federal sources. During the 2017 session base level funding for the least populated counties was established along with a \$5 million-dollar small city fund for cities under 5,000 in population with a maximum award of \$100,000 and no match requirement. LOC will engage with other transportation interests to determine if there is adequate support to advance legislation that would revisit the current 50-30-20 distribution.

*Presented by the Transportation Committee*

## **Y. Tort Liability Reform**

### **Legislation:**

COVID-19 and existing federal court decisions have added risk exposure to cities in areas where their authority has been limited or have not received adequate support. This priority seeks to ensure that cities are not held liable in these areas.

### **Background:**

CIS has already had a COVID related claim filed against it for a COVID related exposure. While there may be many legitimate reasons for a person to seek damages related to the outbreak, local governments have been hampered by inadequate supplies of PPE, testing capability, direct financial support, and legislative relief.

Additionally, the Boise decision that prevents cities from enforcing no camping rules and ordinances subject cities to additional tort liability. The ruling holds that if a person has no place else to go, a city must allow them to sleep somewhere. While there is a logical basis for the core of the ruling, if a city allows a person to sleep in an area that is not designed for camping, such as a park, the person may seek damages. Please note that recreational users of parks may not seek damages due to Oregon's recreational immunity statute that were corrected in 2017.

Finally, in previous sessions, legislation has been introduced but not passed to require cities to permit shelters in areas where they may not be appropriate and "codify" the Boise decision in state law. This legislation did not include immunity from tort liability while removing city authority.

*Presented by the General Government/Human Resources Committee*



## **Z. Water Utility Rate and Fund Assistance**

### **Legislation:**

The League will work during the 2021 legislative session to provide water utility funding assistance for ratepayers that are experiencing ongoing or recent economic hardships. In addition, the LOC will work to identify opportunities for additional investments in public infrastructure, including water supply, wastewater treatment, stormwater management, green infrastructure opportunities and resilience for water systems. Finally, the LOC Water & Wastewater Policy Committee has identified a need for additional, targeted grant funding assistance that will benefit smaller communities. This includes additional funding to conduct rate studies, feasibility studies and funding to help communities comply with new regulatory requirements, including the requirement to include a seismic risk assessment and mitigation plan within regular water master plan updates.

### **Background:**

In response to economic impacts associated with the spread of COVID-19, many of Oregon's drinking water and wastewater utility providers have offered additional assistance to ratepayers. The LOC is aware that most water utility providers have temporarily ceased water service shut offs (disconnections) for non-payment or past due bill collection during this period of economic hardship. Impacts associated with residential ratepayer revenue losses and decreased water consumption from businesses that have either closed or limited operations has resulted in revenue losses for many Oregon water utility providers. Some water utilities have outstanding debt from prior infrastructure investments and have expressed concerns that reductions in revenue may impact the ability to make the ongoing debt payments. In addition, the economic hardships that are being experienced by many Oregonians, especially in low-income and minority communities, will be ongoing; highlighting the need for additional ratepayer assistance investments that focuses on equity and our most vulnerable populations.

The LOC will work to identify funding for water utility ratepayer assistance and will work to establish a framework for the distribution of funds and will seek to ensure that this crisis does not exacerbate existing inequities, especially for Black, Indigenous, other Communities of Color and for rural Oregonians.

In addition, while COVID-19 has created unique revenue challenges for water utility providers, a key issue that most cities continue to face is how to fund infrastructure improvements (including maintaining, repairing and replacing existing infrastructure and building new infrastructure to address capacity and regulatory requirements). Increasing resources in programs that provide access to lower-rate loans and infrastructure-specific grants will assist cities in investing in vital infrastructure improvements which will also help bolster economic recovery. Infrastructure development impacts economic development, housing, and livability. The level of funding for these programs has been inadequate compared to the needs over the last few biennia and the funds are depleting and unsustainable without significant program modifications and reinvestments.

The LOC will pursue additional funding through the state's Special Public Works Fund, which provides funding assistance through Business Oregon for a variety of public infrastructure needs and will explore state bonding capacity opportunities for water-specific infrastructure needs. In addition, LOC will pursue funding for small communities that face regulatory and operational challenges. Examples of small-community funding assistance opportunities may include expanded grant opportunities through existing funding programs and additional funding assistance to help communities with regulatory compliance and engage in utility best practices, including rate studies.

*Presented by the Water/Wastewater Committee, endorsed by the Community Development Committee*

## Acknowledgements

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